

2018

Town of Jay Maine Ordinances

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Addressing Ordinance

Section 1. Purpose

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

Section 2. Authority

This ordinance is adopted pursuant to and consistent with the Municipal Home Rule Powers as provided for in Article VIII, Part 2, § 1 of the Constitution of the State of Maine and Title 30-A MRSA § 3001. This is a land use ordinance within the meaning of Title 30-A MRSA § 4452.

Section 3. Administration

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

- a. A Town of Jay map for official use showing road names and numbers.
- b. An alphabetical list of all property owners as identified by current assessment records, by last name, showing the assigned numbers.
- c. An alphabetical list of all roads with property owners listed in order of their assigned numbers.

Section 4. Naming System

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

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

Section 5. Numbering System

Numbers shall be assigned every fifty (50) feet along both sides of the road, with even numbers appearing on the left side of the road and odd numbers appearing on the right side of the road, determined by the number origin. The following criteria shall govern the numbering system:

- a. All new number origins shall begin from Main Street. Roads to the East shall be numbered West to East, roads to the West shall be numbered East to West. For dead end roads, numbering shall originate at the intersection of the adjacent road and terminate at the dead end.
- b. The number assigned to each structure shall be that of the interval falling closest to the primary entrance door or driveway of said structure.
- c. Every structure with more than one principle use or occupancy shall have a separate number for each use or occupancy (i.e. duplexes will have two separate numbers; apartments will have one street number with an apartment number, such as 235 Maple Street, Apt. 2).

Section 6. Compliance

All owners of structures shall, on or before July 1, 1996, display and maintain in a conspicuous place on said structure, the assigned numbers in the following manner:

- a. Number on the structure or residence. Where the residence or structure is within fifty (50) feet of the edge of the road right-of-way, the assigned number shall be displayed on the front of the residence or structure in the vicinity of the primary entrance.
- b. Number at the Street line. Where the residence or structure is over fifty (50) feet from the edge of the road right-of-way, the assigned number shall be displayed on a post, fence, wall, mailbox, or on some structure at the property line adjacent to the walk or access drive to the residence or structure.
- c. Size and Color of Number. Numbers shall be displayed in a color and size (minimum of 3 inches in height) approved for use by the Board of Selectmen and shall be illuminated or of reflective material and located as to be visible from the road.

- d. Every person whose duty is to display the assigned number shall remove any different number which might be mistaken for, or confused with, the number assigned in conformance with this ordinance.
- e. Interior Location. All residents and other occupants are requested to post the assigned number and road name adjacent to their telephone for emergency reference.

Any individual, corporation, partnership or other legal entity who violates any provision of this Ordinance shall be subject to the civil penalties as provided in Title 30-A MRSA § 4452. The Selectmen and the Code Enforcement Officer shall enforce the provisions of this Ordinance.

Section 7. New Structures, Developments and Subdivisions

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

- a. New Structures and Developments. Prior to any new structure being constructed or developed, or lot redeveloped, it shall be the duty of the owner to procure an assigned number from the Board of Selectmen. This shall be done on or before the time that the Town issues its certification to CMP of the lot's subdivision status.
- b. New Subdivisions. Any prospective subdivider shall show the approved road name and lot numbering system on his submission to the Planning Board. On the final plan, the prospective subdivider shall mark lines or dots, in the center of any street, every fifty (50) feet so as to aid in assignment of numbers to structures subsequently constructed.

Section 8. Effective Date

This ordinance shall become effective as of June 19, 1995. Prior to July 1, 1996, it shall be the duty of the Town of Jay to notify by mail each owner and the Post Office of the new address. It shall be the duty of each property owner to comply with this ordinance by July 1, 1996 except new structures, developments and subdivisions shall comply with this Ordinance as provided in Section 7.

Jay Animal Control Ordinance

Part I. General Provisions

Section 101. Short Title: This Ordinance shall be known and may be cited as the “Jay Animal Control Ordinance.”

Section 102. Purposes and Policies: The purpose of this Ordinance is to control Dogs and other domesticated and undomesticated Animals within the Town of Jay in the interest of health, safety, and general welfare of its residents. As well as to provide for proper treatment and protection for domesticated Animals within the Town of Jay.

Section 103. Authority: This Ordinance is adopted pursuant to 30-A M.R.S.A. § 3001 and 7 M.R.S.A. § 3901 *et seq.*

Section 104. Effective Date: This Ordinance is effective upon an affirmative vote at a Town Meeting.

Section 105. Severability: If any provision or section of this Ordinance is held void or invalid, such invalidity shall not affect other provisions of this Ordinance that can be given effect in whole or in part without the invalid provision.

Section 106. Repeal: The Animal Control Ordinance adopted March 17, 1986 and amended June 18, 1986 is hereby repealed.

Part II. Definitions: Subject to additional definitions contained in the subsequent Parts of this Ordinance and unless the context otherwise requires, in the Ordinance the following terms have the following meanings (such definitions to be equally applicable to all parts of speech and to both the singular and plural forms of the terms defined):

1. “Animal” means every living, sentient creature not a human being.
2. “Animal Control” means control of dogs, cats, and domesticated or undomesticated animals pursuant to 7 M.R.S.A. § 3948.
3. “Animal Control Officer” means the person who is appointed annually by the Select Board pursuant to 7 M.R.S.A. § 3947.
4. “Animal Control Shelter” means the Animal Shelter designated as the Jay Animal Shelter pursuant to Section 302 of this Ordinance.
5. “Animal Shelter” means a facility that houses animals and operates for the purpose of providing stray, abandoned, abused or owner-surrendered animals with sanctuary or finding the animals temporary or permanent adoptive homes.
6. “At Large” means off the premises of the owner and not under the control of any person whose personal presence and attention would reasonably control the conduct of the animal

pursuant to 7 M.R.S.A. § 3911. This section shall not apply if any animal is provoked by trespassing people or animals on private property on which the animal is situated or by other legitimate cause for provocation.

7. “Dog” means a member of the genus and species known as *canis familiaris* or any canine, regardless of generation, resulting from the interbreeding of a member of *canis familiaris* with a wolf hybrid.
8. “Dangerous Dog” means a dog that bites an individual or a domesticated animal who is not trespassing on the dog owner's or keeper's premises at the time of the bite or a dog that causes a reasonable and prudent person who is not on the dog owner's or keeper's premises and is acting in a reasonable and nonaggressive manner to fear imminent bodily injury by assaulting or threatening to assault that individual or individual's domestic animal pursuant to 7 M.R.S.A. § 3952.
9. “Keeper” means a person in possession or control of a dog or other animal. A person becomes the keeper of a stray domesticated animal, other than a dog or livestock, if the person feeds that animal for at least 10 consecutive days.
10. “Owner” means a person owning, keeping or harboring a dog or other animal.
11. “Person” means a human being, corporation, partnership, association, LLC, or any legal entity.
12. “Pet” means a dog, cat or other domesticated animal commonly kept as a companion, but does not include tamed animals that are ordinarily considered wild animals or livestock.
13. “Town Property” means all real property owned by the Town of Jay including, but not limited to, the Mini-Park on Church Street and the town ball fields.

Part III. Municipal Rights and Duties

Section 301. Animal Control Officer: The Select Board shall appoint an Animal Control Officer for the Town of Jay pursuant to 7 M.R.S.A. § 3947. The Animal Control Officer shall be responsible for the Animal Control in the Town of Jay. His duties shall include, but are not limited to:

- (a) Assisting the Jay Police Department, Jay Fire Department, and/or the Franklin County Sheriff's Department whenever called upon by such departments with respect to Animal Control.
- (b) Enforcing this Ordinance and all applicable State law.
- (c) Attending proceedings at the District or Superior Court as necessary.
- (d) Complying with all the terms and conditions of his working agreement with the Town of Jay.

Section 302. Animal Control Shelter: The Select Board shall designate one or more Animal Shelters as the Jay Animal Control Shelter. The Select Board shall enter into a contract with the designated Animal Control Shelter pursuant to 7 M.R.S.A. § 3949. The Franklin County Animal Shelter is designated as the Jay Animal Shelter.

The Animal Control Shelter shall be responsible to receive all Animals brought to it by the Animal Control Officer, the Jay Police Department and the Franklin County Sheriff Department. The Animal Control Shelter duties shall include, but are not limited to:

- (a) Providing an Animal Shelter that complies with all rules and regulations of the State.
- (b) Keepings or causing to be kept accurate and detailed records of all licensing, impoundment, and disposition of all animals coming into its control or custody.
- (c) Complying with all terms and conditions of its contract with the Town of Jay.

Section 303. Town Property: It shall be the right of the Select Board to post Town Property as “No Pets Allowed” or to restrict pet access to certain times of the day or certain periods of the year.

Part IV. Dogs

Section 401. License Required: All Dogs kept, harbored, or maintained within the limits of the Town of Jay shall be licensed in accordance with the appropriate laws of the State of Maine, 7 M.R.S.A. § 3921 *et seq.* This provision shall not apply to any Dog belonging to an out-of-state resident visiting within the Town of Jay without the intention of becoming a resident.

The municipal clerk may not issue a license for a Dog until the applicant has filed with the clerk proof that the Dog has been immunized against rabies.

Section 402. Running at Large: It shall be a violation of this Ordinance for any Dog, licensed or unlicensed, to run At Large within the Town of Jay. Violations of this Section are the sole responsibility of the Dog’s Owner or Keeper.

This ordinance shall not be interpreted as restricting persons owning specially trained hunting/working dogs from actually using their dogs for hunting/working said dogs in the presence of or under the control of the owner or an agent of the owner and are actually lawfully being used for hunting or training for hunting in compliance with applicable State Statutes and regulations of the State of Maine.

Section 403. Waste: It shall be a violation of this Ordinance for any Owner or Keeper of any Dog, licensed or unlicensed, to fail to remove dog waste or excrement from any sidewalk, street, or Town Property.

Section 404. Disturbing the Peace

- (a) Upon receiving a complaint of a barking or howling dog, the authorized Animal Control Officer or police officer shall investigate the allegation and upon probable cause may give notice to the owner of such dog that such annoyance and disturbance must cease.

- (b) It shall be a violation of this Ordinance to own, keep, or harbor any Dog that by habitual barking, yelping, or howling creates a nuisance and disturbs the peace and quiet of any neighborhood or persons.
- (c) Violations of this Section are the sole responsibility of the Dog's Owner or Keeper.
- (d) Subsection (a) of this section shall not apply if any animal is provoked by trespassing people or animals on private property on which the animal is situated or by other legitimate cause for provocation.

Section 405. Dangerous Dogs: It shall be a violation of this Ordinance to own, keep, or harbor a Dangerous Dog.

- (a) If a Dangerous Dog cannot be safely taken up and impounded, it shall be within the authority of the Animal Control Officer or any other police officer within the Town of Jay to use whatever force necessary to subdue such a Dangerous Dog.
- (b) If any Dangerous Dog has bitten any Person or caused an abrasion of the skin of any Person and is humanely destroyed pursuant to Subsection (a) of this section or by court order, it shall be the duty of the Animal Control Officer to preserve the body and deliver it to the State of Maine Department of Health and Human Services Rabies Lab for any necessary testing.
- (c) A person who owns or keeps a dangerous dog commits a civil violation for which the court shall adjudge a fine of not less than \$250 and not more than \$1,000, plus cost, none of which may be suspended. These penalties shall be calculated and assessed on an Owner or Keeper regardless of whether the Dangerous Dog is the same Dog in each violation.

Section 406. Impoundment of Dogs

- (a) The Animal Control Officer or any police officer within the Town of Jay may seize, impound, or restrain any Dog violating this Ordinance or State law.
 - (1) It shall be a violation of this Ordinance to interfere with, hinder, or molest any Animal Control Officer in the performance of his duties. It shall be a violation of this Ordinance to release or seek to release any Dog in the custody of the Animal Control Officer except as provided under this Ordinance.
- (b) When the owner of any such impounded Dog is known or can be reasonably ascertained by the Animal Control Officer or the Franklin County Animal Shelter, the Owner shall, if possible, be notified within three (3) days of such impoundment.
 - (1) Failure to provide such notice shall in no way impose any liability upon the Town of Jay or the Animal Control Officer or the Animal Control Shelter for destruction or transfer to another person of any Dog pursuant to Section 407.

- (c) Such Dogs shall be taken and impounded by the Animal Control Officer in the Franklin County Animal Shelter and shall be held for at least six (6) days unless the Owner shall claim the Dog.
- (d) Any Dogs impounded under the provisions of this ordinance and not reclaimed by the Owner within six (6) days shall be considered the property of the Franklin County Animal Shelter.
- (e) Any Owner may regain possession of an impounded Dog upon compliance with this Ordinance and the payment of the impoundment fees.
- (f) An Owner of a Dog impounded at the Franklin Animal Shelter is responsible for impoundment fees whether or not he claims the Dog within the six (6) day period.

Section 407. Disposition of Unclaimed Dogs: Dogs considered property of the Franklin County Animal Shelter pursuant to Section 406 may be given or sold to any person or, if no suitable home may be found, may be humanely destroyed in accordance with State law.

Part V. Treatment of Animals

Section 501. Necessary Sustenance: All Persons, Owners, or Keepers responsible for confining or impounding any Animal must supply the Animal with sufficient food and water pursuant to 7 M.R.S.A. § 4013.

- (a) Food shall be of sufficient quantity and quality to maintain all Animals in good health.
 - (1) Equines shall have sufficient hay, grain, or other feed to maintain normal body weight and feeding arrangements shall be such that each equine get its own proper share of food at least twice a day.
- (b) Potable water must be provided daily and in sufficient quantities for the health of the Animal if it is not accessible to the Animal at all times. Snow or ice is not an adequate source of water

Section 502. Medical Attention: All Persons, Owners, or Keepers responsible for confining or impounding any Animal must supply the Animal with necessary medical attention when the Animal is or has been suffering from illness, injury, or disease pursuant to 7 M.R.S.A. § 4014.

Section 503. Proper Shelter: All Persons, Owners, or Keepers responsible for confining or impounding any Animal must provide the Animal with proper shelter, protection from the weather, and humanely clean conditions pursuant to 7 M.R.S.A. § 4015.

- (a) Indoor shelters. The ambient temperature shall be compatible with the health of the Animal and the shelter shall be adequately ventilated by natural or mechanical means to provide for the health of the Animal at all times.
- (b) Outdoor shelters.

- (1) Any Keeper or Owner of any Animal must provide sufficient shade by natural or artificial means to protect the Animal from direct sunlight.
 - (2) An artificial shelter, with a minimum of 3 sides and a waterproof roof, appropriate to the local climatic conditions and for the species and breed of the Animal must be provided as necessary for the health of the Animal.
- (c) Space standards. The housing facilities shall be structurally sound and maintained in good repair to protect the Animal from injury and to contain the Animal. The shelter shall be a sufficient height and size to provide each Animal adequate freedom of movement.
- (d) To minimize health hazards, minimum standards of sanitation necessary to provide humanely clean conditions for both indoor and outdoor enclosures shall include periodic cleanings to remove excretions and other waste materials, dirt, and trash.

Part VI. Penalty

Section 601. Enforcement Procedure: The Select Board may commence an enforcement proceeding in accordance with this Section. Prior to commencing such enforcement action, the Select Board may consult and coordinate with the Animal Control Officer, Franklin County Animal Shelter, or appropriate state agencies concerning the alleged violations.

The Animal Control Officer, Jay Police Department or the Franklin County Sheriff's Department, upon information, may issue a Notice of Violation to any Owner in violation of this Ordinance. The Notice of Violation shall include the date of alleged violation, description of the offense and shall include a specific reference to the provision of this Ordinance alleged to have been violated. Such Notice may be served by certified mail, return receipt requested, or in hand by the Animal Control Officer or any other police officer within the Town of Jay or the Franklin County Sheriff's Department.

Section 602. Civil Action: After service of the Notice of Violation, the Animal Control Officer may bring a civil action against any Owner in violation of this Ordinance in the Maine District Court. Any Owner found in violation of any of the provisions of this Ordinance or state law shall be guilty of a civil violation and upon conviction thereof shall be fined as provided in Section 603 or pursuant to 7 M.R.S.A. § 3901 *et seq.* and/or any other applicable state law. The Owner shall also be responsible for the Town of Jay's attorney's fees and costs.

Section 603. Fines: Whoever violates the provisions of this Ordinance shall be punished by a fine of \$50.00 for the first offense, \$100.00 for the second offense, and \$150.00 for each subsequent offense, with the exception of the fines as outlined in Section 405 for Dangerous Dogs.

ORDINANCE TO ESTABLISH THE JAY BOARD OF ASSESSMENT REVIEW

PART I

GENERAL PROVISIONS

§101 SHORT TITLE

This Ordinance shall be known and may be cited as the "Ordinance to Establish the Jay Board of Assessment Review".

§102 PURPOSES AND POLICIES

The Town of Jay has enacted this Ordinance to establish a Board of Assessment Review and to establish administrative procedures to review decisions on property tax abatements made by the Jay Board of Assessors. This Ordinance shall be liberally construed to effectuate its purposes and policies.

§103 AUTHORITY

This Ordinance is enacted pursuant to Article VIII Part Second of the Constitution of the State of Maine and the Laws of the State of Maine, including, without limitation: 30-A M.R.S.A. Section 2526(6) and Section 2691 and 36 M.R.S.A. Section 843.

§104 APPLICATION OF THIS ORDINANCE

This Ordinance applies only to appeals from decisions made by the Jay Board of Assessors on requests for property tax abatements and other determinations that are necessary with respect to tax assessments according with the general laws of the State of Maine.

The Board of Assessment Review has no jurisdiction or authority over any other decisions of the Municipal Officers, the Code Enforcement Officer or the Planning Board, including without limiting, any decisions made by the Code Enforcement Officer or Planning Board under the Jay Environmental Control and Improvement Ordinance.

The Board of Assessment Review has no jurisdiction or authority over any requests to the Municipal Officers for tax abatements based on infirmity or poverty.

§105 PAYMENT REQUIREMENTS FOR TAXPAYER

This section does not apply to property with a valuation of less than \$500,000.

1.

If the taxpayer has filed an appeal under this Ordinance without having paid an amount of current taxes equal to the amount of taxes paid in the next preceding tax year, provided that amount does not exceed the amount of taxes due in the current tax year, or the amount of taxes in the current tax year not in dispute, whichever is greater, by or after the due date, the appeal process shall be suspended until the taxes, together with any accrued interest and costs, have been paid. If an appeal is in process upon expiration of a due date for payment of taxes without the appropriate amount of taxes having been paid, the appeal process shall be suspended until the appropriate amount of taxes described in this subsection, together with any accrued interest and costs, has been paid.

§106 TIME REQUIREMENTS FOR TAXPAYER

Any taxpayer whose request for a property tax abatement has been denied or granted only in part by the Jay Board of Assessors must file an application for review of the decision with the Board of Assessment Review pursuant to this Ordinance within sixty (60) days of the date of the

decision of the Jay Board of Assessors. If no application for review is filed within the sixty (60) day period, the taxpayer shall have no further rights of appeal.

In accordance with 36 M.R.S.A. §842, if the Jay Board of Assessors before whom an application for abatement for property tax is pending fails to give written notice of its decision within sixty (60) days of the date of filing of the application for abatement, the application is deemed to have been denied and the taxpayer may proceed pursuant to this Ordinance for review of that denial.

§107 TAXPAYER TO LIST PROPERTY

Any taxpayer who fails to furnish to the Jay Board of Assessors a true and perfect list of all of his estates, not by law exempt from taxation, of which he was possessed on the first day of April of the tax year that he is requesting an abatement shall be barred from an abatement or an appeal under this Ordinance.

Notwithstanding this provision, a Veteran's widow or a minor child may proceed with an abatement request to the Municipal Officers.

§108 SEVERABILITY

If any provision or section of this Ordinance, or the application thereof to any person or circumstance, is held void or invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect in whole or in part without the invalid provision or application, and to this end each provision of this Ordinance is declared to be severable and independent. It is the intent of the Town of Jay that each and every part, clause, paragraph, section and subsection of this Ordinance be given effect to the degree possible.

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§109 EFFECTIVE DATE

This Ordinance shall be effective upon enactment by a Town meeting of the Town of Jay

PART 2

§201 ESTABLISHMENT

The Town of Jay hereby establishes the Jay Board of Assessment Review.
The Jay Board of Assessment Review is sometimes referred to herein as the Board.

§202 COMPOSITION

The Board shall consist of five (5) members and two (2) alternate members. Members of the Board and alternate members shall be residents of the State of Maine, at least eighteen (18) years of age and citizens of the United States at all times during their terms, and shall neither be municipal officers or a spouse of a municipal officer or employees of the Town of Jay or any of its boards, agencies or departments.

An alternate member shall attend all meetings of the Board and participate in its proceedings, but may vote only when designated by the Chairman to sit for a member. If any member or alternate member misses three (3) or more consecutive meetings of the Board then such lack of attendance may be cause for removal of such member or alternate.

When a member is unable to act because of interest, physical incapacity, absence, vacancy in the position or any other reason satisfactory to the Chairman, the chairman shall designate an alternate member to sit and vote in his or her stead.

§203 APPOINTMENT

The members of the Board and alternate members shall be appointed by the Municipal Officers. The Town Manager or any individual selectman shall have the authority and power to nominate one or more individuals for consideration by the Municipal Officers for appointment to the Board of Assessment Review.

§204 TERMS OF OFFICE

Except for Initial Appointees as specified below, the terms of each member and alternate member shall be five (5) years. Members shall serve until their successors are duly appointed,

qualified and assume their duties.

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Initial Appointees. Initially, one member shall serve for 1 year, one member for 2 years, one member for 3 years, one member for 4 years and one member for 5 years. The Initial Appointees for alternates shall be one alternate for 2 years and one alternate for 3 years.

§205 VACANCIES

The Municipal Officers may declare a vacancy on the Board upon the nonacceptance, resignation, death, removal, permanent disability or incompetency of any member or alternate, relocation of a member's or associate's place of residence outside the State of Maine, or failure of any person to qualify for office. In such circumstances, the Municipal Officers shall fill all positions of members or alternate members to complete the vacated term.

§206 REMOVAL

After notice and hearing, the Municipal Officers may remove or dismiss any member or alternate member for cause before the member or alternate member's term expires. The term "cause" shall mean conduct or conflict affecting the ability and fitness of the member or alternate member to perform his duties including failure to attend meetings.

The notice provided hereunder shall be in writing and shall state the reasons for the proposed removal and inform the member or alternate member of his right to a hearing before the Municipal Officers within thirty (30) days of receipt of the notice. This hearing may be held in executive session if the requirements of 1 M.R.S.A. 405 are met or, upon request by the member or alternate member to be removed, an open meeting may be held in accordance with 1 M.R.S.A. 401 et seq. and this Ordinance.

§207 COMPENSATION

All members of the Board and alternate members shall receive compensation at the rate of \$20 for each meeting attended.

§208 OFFICERS

A. Election of Officers.

The Board of Assessment Review shall, by majority vote, elect a Chairman, Vice-Chairman and Secretary at an annual organizational meeting held in September or upon the resignation, removal or cessation of service of any of the officers, as soon thereafter as practical for the purpose of filling any vacancies. The Chairman, Vice Chairman and Secretary shall each serve a term of one year or until his or her successor is duly elected by the Board. The Chairman, Vice Chairman and Secretary may serve successive terms, if so elected.

B. Chairman.

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The Chairman shall preside at all meetings, if present, shall prepare the agenda as provided in Section 209 herein, shall call special meetings and workshops when necessary, shall transmit reports, plans and recommendations of the Board to the appropriate governing authority and shall fulfill all the customary functions of his or her office. The Chairman may also administer oaths. The Chairman shall be the official spokesman of the Board.

C. Vice-Chairman.

In the absence of the Chairman, the Vice-chairman shall act as chairman and shall have all the powers of the Chairman.

D. Secretary.

The Secretary shall assist the Chairman in preparing the agenda for Board meetings and proceedings, send out notice for meetings, public hearings and other proceedings of the Board, record, maintain and show the vote of each member on every question in which a formal recorded vote is made under the procedure of the Board or his or her absence or failure to vote, and shall maintain a permanent record of all correspondence, findings, resolutions and determinations of the Board. All records shall be deemed public and may be inspected at

reasonable times unless covered by confidentiality order under Section 302. The records shall be filed in the Town Clerk's Office. The Secretary shall also make such certifications of Board action as may be required from time to time.

§209 MEETINGS, QUORUM, VOTING, AGENDA

A. Meetings.

The number of meetings of the Board shall be as provided by the rules of the Board unless a particular meeting is excused by the Chairman. The Board shall meet at least once a year in September for organizational purposes.

Meetings shall be called by the Chairman as required or any three members of the Board or by the municipal officers.

The Initial Appointees shall hold an initial organizational meeting within thirty (30) days after five members have been duly appointed to the Board. At the initial organizational meeting the Board shall elect officers who shall hold office until the September, 1997 organizational meeting.

The Board may hold executive sessions as provided in the Maine Freedom of Access Act 1 M.R.S.A. 401 et seq. otherwise all meetings, hearings, proceedings and deliberations of the Board shall be open to the public in accordance with the Maine Freedom of Access Act, 1 M.R.S.A. 401 et seq.

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Workshops may be called by the Chairman or members designated by the Chairman for the presentation of information. Workshops shall be informational only, shall not be used by the Board for the weighing of positions or reasons for or against a proposition, and shall not be used by the Board for the formulation of formal decisions on any matter.

Any member of the Board may voluntarily disqualify himself or herself from voting on a particular matter for any reason, including conflict. In addition, a member shall be disqualified from voting on a particular matter for any reason by a majority vote of the members present and voting, except the member whose disqualification is at issue shall not vote on his or her own disqualification.

If there are two alternate members, the chairman shall designate which will serve in the place of the absent or abstaining member or any member who is disqualified on a particular matter.

B. Quorum and Voting.

No business shall be transacted by the Board without a quorum. A quorum shall consist of three members or alternate members authorized to vote. The Board shall act by a majority vote, calculated on the basis of the number of members present, and a meeting may be adjourned for a period not exceeding three (3) weeks at any one time. A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the matter under consideration. If a member has a conflict of interest, the member shall not be counted by the Board in establishing the quorum for such matter.

C. Agenda.

No item of business or plan shall be placed on the Board agenda for any meeting unless such item or plan shall have been submitted to the Board not less than ten (10) days prior to the date of a meeting or other proceeding, provided, however, that the Board may, upon request or on its own motion, waive the 10 day advance submissions requirement. The Chairman shall determine the agenda in such a manner as to facilitate the execution of the duties of the Board.

D. Rules and Regulations.

The Board may provide, by regulations which shall be recorded by the Secretary, for any matter relating to the conduct of any hearing, provided that the Chairman may waive any regulations upon good cause shown and the Board may make such orders as are provided for under Section 304.

§210 POWER AND DUTIES

The Board shall have the following powers and duties:

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A. To exercise such powers as are provided to the Board by this Ordinance and the Constitution and laws of the State of Maine.

B. The Board may make such reasonable abatements as they consider proper to correct any illegality, error or irregularity in the assessment and grant or deny in whole or in part; the request for property tax abatement in accordance with the provisions and standards contained in this Ordinance.

C. To act fairly, independently, impartially and shall avoid ex parte communications unless otherwise subject to a confidentiality order issued by the court or duly authorized by this Ordinance, the Board shall conduct all of its proceedings, hearings, deliberations in a public forum.

D. To obtain such goods and services, and employ or contract with such staff, including but not limited to appraisers, attorneys, engineers, accountants and other professionals as may be necessary to carry out its duties hereunder and to pay for such expenses within the limits of appropriations made for the purpose.

E. To issue such orders as necessary to properly administer and to ensure compliance with the ordinance.

F. To administer oaths, take testimony and hold hearings.

PART 3

ADMINISTRATIVE

§301 APPLICATION PROCEDURE

A. To initiate an appeal to the Board, the applicant must file a timely written application. The application shall set forth the following:

1. Name and address of applicant.
2. A general description of the property which is the subject of the appeal. If the property includes real estate, the description shall include the Assessors' Map and Lot Number.
3. Year of disputed assessment.
4. Assessed value for the property as originally determined by the Jay Board of Assessors.
5. Amount of any abatement(s) previously granted by the Jay Board of Assessors for the assessment in question.

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6. The valuation applicant alleges should have been placed on the property.

7. A brief statement of all proceedings before the Jay Board of Assessors concerning the disputed assessment.

8. A brief statement of the factual basis for the Applicant's tax abatement appeal.

9. A brief statement of the legal grounds for the applicant's tax abatement appeal.

B. The fee to accompany applications for appeal shall be twenty-five (\$25) dollars. Checks are to be made payable to the Town of Jay.

C. A fee of fifty cents (\$.50) per page shall be charged for all copies of documents filed with the Board. Checks are to be made payable to the Town of Jay.

§302 CONFIDENTIALITY

The Board shall keep confidential those documents which may remain confidential pursuant to the Maine Freedom of Access Law 1 M.R.S.A. Section 401 et seq. The Board shall also keep confidential information demonstrated by the person submitting it to be a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of that person and would make available information not otherwise publicly available. The Board shall make determinations of confidentiality and any person aggrieved by such determination may appeal to court in accordance with state law. The Board shall withhold disclosure of such information pending a final judicial determination on any claim of confidentiality.

§303 BOARD DECISIONS

A. Acceptable for Processing. The Board shall, within 10 days of receipt of an application, notify the applicant in writing either that the application is acceptable for processing or, if the application is not acceptable for processing, the specific additional information needed to make an acceptable application.

B. Requests for Further Information. The fact that an application is deemed acceptable for processing does not prohibit the Board from requesting further information and data deemed necessary to evaluate the application. At any time during the review of an application, the Board or staff may request any additional information that is reasonably necessary to make any finding or determinations required by this Ordinance or any other provision of law.

C. Public Hearing. Within 10 days after an application has been determined acceptable for processing, the Board shall notify the applicant in writing of the date, time and location of a public hearing, if the Board decides to hold one. The Board shall also provide

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public notice of the public hearing in a manner designed to inform interested and potentially interested persons.

If the Board decides to hold a public hearing, the public hearing shall take place within 20 days of the date the Board mails written notice to the applicant that an application is acceptable for processing.

D. Board Action. Within 30 days of the close of the public hearing, or any continuance hearing thereto, on an application, or within 60 days of acceptance for processing of the application if no hearing is held, or within such other time limits as the Board may establish by order, either with the applicant's consent or for good cause after giving the applicant notice and an opportunity to be heard, the Board shall make decision in accordance with this Ordinance, in particular Section 311:

E. Written Decisions. Every decision of the Board on an application shall be in writing and shall include findings of fact, conclusions of law, a plain statement of the appropriate rights of administrative and judicial review, and the time within which those rights must be exercised.

§304 BOARD ACTIONS PRIOR TO HEARING OR FINAL DECISION

The following procedures may apply to any application pending before the Board.

A. Procedure and Scheduling Orders. In its discretion, the Board may issue scheduling orders governing all proceedings occurring between acceptance of the application for processing and final decision by the Board. Such orders may but need not necessarily include provisions directing or authorizing:

1. presentation of evidence or argument by the applicant or by members of the public;
2. opportunities for the Board or staff to seek or provide amplification or clarification of any matter under consideration by the Board;
3. particular methods or formats for the submission of information such as pre-filed testimony or affidavit;

4. procedures for participation by members of the public that have a direct and substantial interest which may be affected by the proceedings including but not limited to adequate notice of the hearing or related Board deliberations, opportunities for discovery, and manner of presentation of evidence; and
5. such other mechanisms as may in the discretion of the Board facilitate orderly consideration of the issues presented during consideration of the application.

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§305 COMPUTATION AND ENLARGEMENT OF TIME

In computing any period of time provided by this Ordinance, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

When, by this Ordinance or by order of the Board, an act is required to be done at or within a specified time, the Board may within its discretion at any time order the period enlarged for a reasonable period for good cause shown.

§306 HEARINGS

- A. The Board may schedule a public hearing on an application after the application is deemed acceptable for processing.
 - B. In the event the Board elects not to hold a public hearing the Board shall decide the matter as expeditiously as possible giving due regard to the applicant and the Jay Board of Assessors and within the time limits contained in this Ordinance.
 - C. At a reasonable time prior to the public hearing, the Board shall cause notice of the date, time and place of such hearing, the location of the building or lot, and the general nature of the question involved, to be given to the person making the application and to be published in a newspaper of general circulation in Jay. The Board shall also cause notice of the hearing to be given to the Jay Board of Assessors and the applicant.
 - D. The Board shall provide as a matter of policy for exclusion of irrelevant, immaterial, or unduly repetitious evidence.
 - E. The order of business at a public hearing shall be as follows:
 1. The Chairman calls the hearing to order.
 2. The Chairman determines whether there is a quorum.
 3. The Chairman gives a statement of the case and submit all correspondence and reports received to the record of the proceeding.
 4. The Board determines whether it has jurisdiction over the appeal.
 5. The applicant is given the opportunity to present his or her case.
 6. The Assessors are given the opportunity to present its case.
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7. The Board may call its own witnesses. .
 8. The applicant may ask questions of the all witnesses,
 9. The Assessors may ask questions of all witnesses.
 10. The Board may ask questions of all witnesses.
 11. All parties are given the opportunity to refute or rebut statements made throughout the hearing.
 12. The hearing is closed after all parties have been heard. If additional time is needed, the hearing may be continued to a later date. All participants should be

notified of the date, time and place of the continued hearing.

13. Written testimony may be accepted by the Board for seven days after the close of the hearing.

F. The Chairman may waive any of the procedures in this Section if good cause is shown.

§307 GENERAL EVIDENCE

A. Admissibility. Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded. The Board's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted to the Board.

B. Official Notice. The Board may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters within its specialized knowledge and of statutes, regulations and nonconfidential Board records. Facts officially noticed shall be included and indicated as such in the record.

C. Official Record. An official record or lack thereof may be evidenced in the manner provided in Rule 44 of the Maine Rules of Civil Procedure.

D. Objections. All objections to rulings of the Chairman regarding evidence or procedure and the grounds therefore shall be timely stated during the course of the hearing. If during the course of, or after the close of, the hearing and during its deliberations the Board determines that the ruling of the presiding officer was in error, it may reopen the hearing or take such action as it deems appropriate to correct such error.

E. Offer of Proof. An offer of proof may be made in connection with an objection to a ruling of the presiding officer excluding or rejecting any testimony or question on cross-

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examination. Such offer of proof shall consist of a statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness.

§308 DOCUMENTARY AND REAL EVIDENCE

A. Exhibits and Evidence. All documents, materials and objects offered in evidence as exhibits, shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. The Chairman may require, after prior oral or written reasonable notice, that any person offering any documentary or photographic evidence shall provide the Board with a specified number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably suitable for reproduction.

B. Availability. All written testimony and documents, materials and objects admitted into evidence shall be made available during the course of the hearing for public examination. All such evidence will be available for public examination at the Town Office during normal business hours.

C. Record of Application. In any proceeding involving an application, the application filed with the Board, including exhibits and amendments thereto, shall be placed into evidence.

§309 RECORD

The record upon which any Board decision is to be made shall consist of the application, proposed findings of fact and conclusions, all documentary and real evidence properly submitted and received by the Board, all testimonial evidence whether pre-filed or delivered in person which has been admitted by the Board and, if prepared, the recording or transcript of the proceedings. The record shall remain open for other evidence or testimony for seven (7) days following the close of any public hearing unless otherwise provided by the Board, and if no public hearing is held, then according to Board scheduling order. Once the record has been formally closed, no further evidence of any kind may be placed in the record except by order of the Board and after appropriate notice is given.

§310 STANDARDS OF REVIEW AND BURDEN OF PROOF

A. Standard of Review.

In making the decision, the Board shall follow the following standards and definitions.

1. Constitutional Standard:

All taxes upon real and personal estate, assessed by authority of this State shall be apportioned and assessed equally according to the just value thereof.

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2. "Just value defined":

In the assessment of property. Board in determining just value is to define this term in a manner which recognizes only that value arising from presently possible land use alternatives to which the particular parcel of land being valued may be put. In determining just value. Board must consider all relevant factors, including without limitation, the effect upon value of any enforceable restrictions to which the use of the land may be subjected, current use, physical depreciation, functional obsolescence, and economic obsolescence. Restrictions shall include but are not limited to zoning restrictions limiting the use of land, subdivision restrictions and any recorded contractual provisions limiting the use of lands. The just value of land is deemed to arise from and is attributable to legally permissible use or uses only.

For the purpose of establishing the valuation of unimproved acreage in excess of an improved house lot, contiguous parcels divided by road, power line or right-of-way may be valued as one parcel when: each parcel is 5 or more acres; the owner gives written consent to the assessors to value the parcels as one parcel; and the owner certifies that the parcel are not held for sale and are not subdivision lots.

3. Just value equals fair market value.

Fair market value for purposes of assessments is defined as: the amount a willing buyer would pay and a willing seller would accept where both have reasonable knowledge of relevant facts and neither is under compulsion to enter into the transaction.

B. Burden of Proof. There is a presumption in favor of the validity of the assessment. In all instances in proceedings before the Board the burden of proof is upon the taxpayer. To obtain an abatement a taxpayer must show the original assessment is manifestly wrong. The taxpayer must prove that:

1. the judgment of the assessors was irrational or so unreasonable in light of the circumstances that the property is substantially overvalued and an injustice results;
2. there was unjust discrimination; or
3. the assessment was fraudulent, dishonest or illegal.

§311 DECISIONS

A. If the Board fails to give written notice of its decision within sixty (60) days of the date the application is filed, unless the applicant agrees in writing to extend the time, the appeal shall be deemed denied.

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B. Decisions by the Board shall be made not later than thirty (30) days from the date of the final hearing unless the Board and the applicant agree to an extension of time.

C. The final decision on any matter before the Board shall be made by written order signed by the chairman and shall include a statement of findings and conclusions, as well as the reasons or basis for the findings and conclusions, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial of relief.

D. The Board, in reaching a decision, shall be guided by standards specified in the applicable state laws, this ordinances, and by findings of fact by the Board in each case.

E. The Board may reverse the decision, or failure to act, of the Jay Board of Assessors only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this ordinance or unsupported by substantial evidence in the record.

F. Notice of the decision shall be mailed or hand delivered to the applicant or the applicant's representative or agent and Jay Board of Assessors within seven (7) days of the decision. The notice of decision shall state that the applicant has 60 days from the date the decision is received to appeal, in accordance with §313 of this Ordinance.

G. The decision of the Board shall be filed in the office of the Town Clerk and shall be made public record. The date of filing of each decision shall be entered in the official record and minutes of the Board.

§312 RECONSIDERATION

A. The Board may reconsider any decision. The Board must decide to reconsider any decision, notify all interested parties and make any change in its original decision within 30 days of its original decision. A meeting to decide whether to reconsider shall be called by the Chairman. The Board may conduct additional hearings and receive additional evidence and testimony.

B. Reconsideration should be for one of the following reasons:

1. The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based; or
2. The Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction.

§313 APPEAL

A. Time Limits

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An appeal from a decision of the Board shall be within sixty (60) days after notice of decision or after the application is deemed to be denied.

B. Assessors and Nonresidential Property or High Valued Property

"Nonresidential Property" means property that is used primarily for commercial, industrial or business purposes, excluding unimproved land that is not associated with commercial, industrial or business use.

"High Valued Property" means property with an equalized municipal valuation of \$1,000,000 or greater either separately or in the aggregate.

The Assessors or the Nonresidential Property owner or the High Valued Property owner shall appeal from a decision of the Board to the State Board of Property Tax Review.

C. Assessors and All Other Taxpayers

Either the Assessors or any taxpayer except those taxpayers defined in paragraph B above shall appeal from a decision of the Board to the Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

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TOWN OF JAY

CHANGEABLE SIGN ORDINANCE

ENACTED: April 24, 2006

FIRST AMENDMENT: June 10, 2008

TOWN OF JAY CHANGEABLE SIGN ORDINANCE

1. SHORT TITLE: This Ordinance shall be known and may be cited as the “Jay Changeable Sign Ordinance”.
2. PURPOSE: The purpose of this Ordinance is to regulate the frequency and manner of change of a Display on each side of a Changeable Sign and to do so in a manner that promotes highway safety and to protect the public health, safety and welfare of the Inhabitants of the Town of Jay.
3. AUTHORITY: This Ordinance is enacted pursuant to the Constitution of the State of Maine and the laws of the United States of America and the laws of the State of Maine, in particular to, but not limited to, 23 M.R.S.A. §1914 (11-A) and 30-A M.R.S.A. §3001.
4. DEFINITIONS:
 - a. Changeable Sign – “Changeable sign” means an on-premises sign created, designed, manufactured or modified in such a way that its Message may be electronically, digitally or mechanically altered by the complete substitution or replacement of one Display by another on each side.
 - b. Display – “Display” means that portion of the surface area of a Changeable Sign that is, or is designed to be or is capable of being periodically altered for the purpose of conveying a Message.
 - c. Message – “Message” means a communication conveyed by means of a visual display of text, a graphic element or pictorial or photographic image.
5. REGULATIONS: The Display on each side of a Changeable Sign:
 - (i) may be changed no more frequently than once every two (2) seconds;
 - (ii) must change as rapidly as technologically practicable, provided, however, that a Display may change by phasing, rolling, scrolling and blending;
 - (iii) may consist of alphabetic or numeric text on a plain or colored background and may include graphic, pictorial or photographic images.
6. PROHIBITION: In no event shall a Display on any Changeable Sign flash or display continuous streaming of information or video animation.
7. STATE LAW: Except as provided herein, Changeable Signs within the Town of Jay shall comply with all requirements of State law, in particular, but not limited to, 23 M.R.S.A. §1914 (11-A).

8. ADMINISTRATION: The Town of Jay shall administer the provisions of this Ordinance. The portions of 23 M.R.S.A. §1914 (11-A) not specifically addressed herein shall remain under the administration of the Maine Department of Transportation.
9. NOTIFICATION: The Town shall notify the Maine Department of Transportation in writing that it has adopted this ordinance and shall send it a copy of the same.

DATE OF ENACTMENT: April 24, 2006
FIRST AMENDMENT: June 10, 2008

TOWN OF JAY

CONSUMER FIREWORKS ORDINANCE

A TRUE COPY ATTEST CERTIFIED BY:

Ronda L. Palmer, Town Clerk

SECTION 1

- A. Purpose. This ordinance restricts the use of consumer fireworks to ensure the safety of the residents and property owners of the Town of Jay and of the general public.
- B. Title and Authority. This ordinance shall be known as the “Town of Jay Consumer Fireworks Ordinance”. It is adopted pursuant to the enabling provisions of the Maine Constitution, the provisions of 30-A M.R.S.A. § 3001, and the provisions of P.L. 2011 Chapter 416 § 5 (effective Jan. 1, 2012), codified at 8 M.R.S.A. § 223-A.

SECTION 2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Consumer Fireworks – “Consumer Fireworks’ has the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provisions, but includes only products that are tested and certified by a 3rd party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. “Consumer Fireworks” does not include the following products:

- A. Missile-type rockets, as defined by the State Fire Marshal by rule;
- B. Helicopters and aerial spinners, as defined by the State Fire Marshal by rule;
and
- C. Sky rockets and bottle rockets. For the purposes of this definition, “sky rockets and bottle rockets” means cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the State Fire Marshal by rule, with a wooden stick attached for guidance and stability that rise into the air upon ignition and that may produce a burst of color or sound at or near the height of flight.

SECTION 3. Use of Consumer Fireworks Restricted

No person shall use, possess with the intent to use, display, fire or cause to be exploded consumer fireworks within the Town of Jay except in compliance with all Federal, State and Local laws, ordinances, rules and regulations. The use of Consumer Fireworks requires a permit from the Jay Fire Department. A permit shall be obtained between 9 A.M. and 6 P.M. on the day of discharge of the Consumer Fireworks. No permits will be issued after 6 P.M. This permit at minimum shall include the name and address of the applicant, date of application, date of discharge or use of the Consumer Fireworks, location of discharge, written permission of the landowner if the location is not on land owned by applicant, plan showing discharge and signature of applicant. The Fire Chief or designee shall issue a permit if it is found not to create a fire danger to the general public. When a person requests a permit they may be subject to an inspection of the site before issuance of that permit. The Jay Board of Selectmen shall establish a fee for Consumer Fireworks Use Permit with 50% of the fee deposited in an equipment reserve account for the fire department and the remaining 50% shall be a stipend to the issuer of the permit. Use of consumer fireworks within the Town of Jay is further restricted as follows:

A. General Restrictions.

1. The Town assumes no liability for injuries that result from the use of consumer fireworks or from damages done by the use of consumer fireworks.
2. A person shall use consumer fireworks only on that person's property or on the property of a person who has consented by written permission to the use of consumer fireworks on that property. The use of consumer fireworks on public or town owned property is prohibited.
3. A person shall not use consumer fireworks if the forest fire danger is a Class "4" or greater, as determined by the Department of Conservation, Maine Forest Service or at the discretion of the Fire Department Personnel issuing the permit...
4. Consumer fireworks shall not be used within 100 feet of any combustible structure or within 50 feet of overhead power lines.
5. Spectators shall be no closer than 50 feet from the discharge point of consumer fireworks.

6. Any person using consumer fireworks must provide for the cleanup and removal of all debris. The disposal of unfired or unused fireworks shall be done under the guidelines set by the State Fire Marshall's Office.
7. It shall be unlawful for any person using consumer fireworks, to be under the influence of alcohol or be otherwise impaired while using consumer fireworks.
8. Means to extinguish any spot fires resulting from the use of consumer fireworks must be available, including but not limited to, fire extinguishers, hand tools, and garden hoses. Access to 9-1-1 by landline or mobile telephone also must be available during the use of consumer fireworks should an emergency arise.

B. Hours of Use.

Consumer fireworks may be used during the hours of 9 A.M. and 10 PM, except that on the following days they may be used between the hours of 9 A.M. and 12:30 A.M. the following day:

1. July 4th
2. December 31st
3. The Saturday and Sunday immediately before and after July 4th and December 31st.

SECTION 4. Violation and Enforcement.

- A. Penalty for Use Violation. Any person who violates the provisions of Section 4 (Use of Consumer Fireworks Restricted) shall commit a civil violation punishable by a penalty of two hundred dollars (\$200.00) to four hundred (\$400.00) plus attorney fees and costs for the first offense, and a penalty of five hundred (\$500.00) to one thousand dollars (\$1,000.00) plus attorney fees and costs for subsequent offenses within six years of use violation. Each day such violation occurs or continues to occur shall constitute a separate violation.
- B. Enforcement. This ordinance shall be enforced by the Town of Jay Police Department, the Franklin County Sheriff's Department, the Maine State Police and any law enforcement agency with which the Town of Jay has a mutual aid agreement.

- C. Injunction. In addition to any other remedies available at law or equity, the Town of Jay, acting through its Town Manager, may apply to any court of competent jurisdiction to enjoin any planned, anticipated or threatened violation of this Ordinance.

- D. Seizure & Disposal of Consumer Fireworks. The Town may seize consumer fireworks that the Town has probable cause to believe are used or sold in violation of this Ordinance and shall forfeit seized consumer fireworks to the State for disposal.

SECTION 5. Exceptions.

This section does not apply to a person issued a fireworks display permits from the Maine Commissioner of Public Safety or his or her designee under the provisions of 8 MR.S.A. ordinance § 221-237, and particularly Section 227-A. A fireworks display shall comply with all federal, state and local laws, ordinances, and regulations.

SECTION 6. Annual Review.

The Jay Board of Selectmen will review this Ordinance Annually to see if it needs any amendments or deletions proposed to the voters.

SECTION 7. Severability.

In the event that any section, subsection or portion 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 portion of this ordinance.

SECTION 8. Effective Date.

This Ordinance shall take effect and be in force 30 days after its adoption by the Town of Jay. Notwithstanding the provisions of 1 M.R.S.A. §302, this ordinance applies to any applications pending or approved on the date of its passage, whether or not such applications would constitute a “pending proceeding” under 1 M.R.S.A. §302.

CURFEW ORDINANCE OF THE TOWN OF JAY

Enacted: January 21, 2003

PART 1

GENERAL PROVISIONS

Section 101. Short Title

This Ordinance shall be known and may be cited as the "Curfew Ordinance of the Town of Jay, Maine."

Section 102. Findings

There has been an increase in violence and property crimes by Minors, and an increase in activity among Minors in the Town of Jay.

Persons under the age of seventeen are particularly susceptible, because of their lack of maturity and experience, to participation in unlawful activities and gang-related activities, and to victimization by older perpetrators of crime.

Section 103. Purpose

The purpose of this Ordinance is to provide for the protection of Minors from each other and from other persons, the protection of health, safety, and welfare of the general public, and the reduction of crime, violence, and gang-related activity by Minors in the Town of Jay. A curfew for those under the age of seventeen will aid in the achievement of those goals, and will be in the interest of the public health, safety, and welfare.

Section 104. Authority

This Ordinance is enacted pursuant to Title 30-A M.R.S.A., Section 3001.

Section 105. Applicability

This Ordinance shall apply to Minors in the Town of Jay, whether or not residents of the Town of Jay, and shall also apply to the Parents and Guardians of Minors in the Town of Jay, whether or not residents of the Town of Jay.

Section 106. Severability

If any provision or section of this Ordinance, or the application thereof to any person or circumstance, is determined to be invalid or void by a court of competent jurisdiction, such determination shall not affect other provisions or applications of this Ordinance that can be given effect in whole or in part without the invalid provision or application, and to this end each provision of this Ordinance is declared to be severable and independent. It is the intent of the Town of Jay that each and every part, clause, paragraph, section and subsection of this Ordinance be given effect to the degree possible.

In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance or code of the Town of Jay, the provision which established or establishes the higher standard for the promotion and protection of health and welfare for the community shall prevail.

Section 107. Effective Date and Amendment

This Ordinance shall become effective on the date of adoption, and may be amended by a majority vote of a Town meeting of the Town of Jay.

PART 2**DEFINITIONS****Section 201. Definitions**

Subject to additional definitions contained in the subsequent parts of this Ordinance and unless the context otherwise requires, in this Ordinance the following terms have the following meanings (such definitions to be equally applicable to all parts of speech and to both the singular and plural forms of the terms defined):

Curfew Hours: "Curfew Hours" shall mean the hours from:

10:01 P.M. until 6:00 A.M. for Minors 11 or less years of age

10:31 P.M. until 6:00 A.M. for Minors 12 or 13 years of age, and

11:00 P.M. until 6:00 A.M. for Minors 14 to 17 years of age

On Friday and Saturday evenings the hours specified above shall be extended by one hour

Emergency: "Emergency" shall mean unforeseen circumstances, or the resulting situation, calling for immediate action. This includes, but is not limited to, fire, natural disaster, or vehicular accident, as well as any situation requiring action to avert serious injury or the loss of life.

Guardian: "Guardian" shall mean a person or a public or private agency who, pursuant to court order, is the legal guardian of the Minor. This definition also includes a person to whom parental powers have been delegated under M.R.S.A. Title 18-A, Sections 5-104.

Minor: "Minor" shall mean any person who is seventeen years of age or younger.

Parent: "Parent" shall mean a person who is the natural parent, adoptive parent, or step-parent of the Minor.

Public Place: "Public Place" shall mean a place located in the Town of Jay to which the public, or a substantial group of the public, has access, including, but not limited to, streets, highways, sidewalks, parking lots, vacant lots, parks, and the common areas in and about apartment buildings, office buildings, schools, shops and places of entertainment.

Remain: "Remain" shall mean to linger or stay, as well as to refuse to leave when requested to do so by a police officer, or the owner or other person in control of a Public Place. This term also encompasses activities which may be mobile, such as walking, driving, and riding about in a Public Place.

PART 3**GENERAL PROHIBITIONS****Section 301. Prohibitions**

No Minor shall remain in a Public Place during Curfew Hours.

No Parent or Guardian of a Minor shall knowingly permit, or allow by exercising insufficient control, a Minor to Remain in a Public Place during Curfew Hours.

Section 302. Exceptions

It is an exception to the prohibitions under Section 301 of this Ordinance that the Minor was:

Accompanied by the Minor's Parent or Guardian;

Involved in an emergency or on an errand necessitated by an emergency;

Engaged in an employment activity, or on the way to or from an employment activity, without any detour or stop except as necessary to drop off or pick up a co-employee;

In a motor vehicle involved in interstate travel;

On the sidewalk abutting the Minor's home;

On an errand directed by a Parent or Guardian, without any detour or stop;

Attending a school, religious, or governmental activity, which is supervised by adults, or traveling to or from such a school, religious, or governmental activity without detour or stop;

Attending a recreational activity sponsored by the Town of Jay, a civic organization, or a similar entity, which is supervised by adults, or traveling to or from such an activity without detour or stop;

Exercising rights protected by the First Amendment of the United States Constitution; or

Married, or otherwise legally emancipated.

PART 4

ENFORCEMENT

Section 401. Restriction on Enforcement

A police officer shall not take any action to enforce this Ordinance unless the officer reasonably believes that a violation has occurred and, based on any response as well as other circumstances, no exception provided in Section 302 is applicable.

Section 402. Enforcement Procedure

If a police officer or an owner or other person in control of a Public Place reasonably believes that a person is in violation of this Ordinance:

- A. The owner or other person may notify the police of the alleged violation;
- B. The police officer may ask the apparent offender's age;

The police officer may ask for proof of the apparent offender's age;

The police officer shall be justified in taking action to ascertain the apparent offender's age in the absence of identification, such as taking the apparent offender into custody while contacting his or her Parent or Guardian, or accompanying the apparent offender to his or her residence for the purpose of obtaining identification;

If the apparent offender is a Minor, or cannot produce identification proving otherwise immediately, the officer may ask the reason for the apparent offender's being in a Public Place;

The police officer may take the Minor into custody for the purposes of contacting the Minor's Parent or Guardian to come to take control of the Minor;

During this period, the officer may require the Minor to remain in the officer's presence for a period of up to two hours, so long as the officer complies with all requirements of law, including, without limitation, M.R.S.A. Title 17-A, Sections 1-7;

If the apparent offender is a Minor, the police officer may summons the Minor and the Minor's Parent or Guardian to the District Court for a violation of this Ordinance, in accordance with Rule 4 of the Maine Rules of Civil Procedure.

PART 5

CIVIL PENALTIES

Section 501. Civil Penalties

- A. A Minor who violates this Ordinance may be assessed a civil penalty as follows:

For the first offense, up to five hours of community service and a fine of up to \$50.00; and

For each subsequent offense, up to ten hours of community service and a fine of up to \$100.00.

B. A Parent or Guardian who violates this Ordinance may be assessed a civil penalty as follows:

For the first offense, a fine of up to \$50.00; and

For each subsequent offense, a fine of up to \$100.00.

Section 502. Considerations

In setting civil penalties pursuant to a violation of this Ordinance, prior violations by the same person may be taken into account.

Section 503. Payment

Payment of any civil penalty assessed shall be made in cash or by a certified check drawn on a recognized financial institution, made payable to the "Town of Jay" in an amount equal to the full extent of the civil penalty.

Jay, Maine

Town Ordinances

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Disbursement Warrant Ordinance

Section 1. Purpose.

The purpose of this ordinance is to provide an alternative to the statutory procedure for approval of warrants authorizing the treasurer to disburse money.

Section 2. Authority.

This ordinance is enacted pursuant to 30-A M.R.S.A. §§ 3001 and 5603 (2)(A).

Section 3. Procedure for Approval.

The treasurer may disburse money only on the authority of a warrant drawn for the purpose, either (a) affirmatively voted and signed by a majority of the municipal officers at a duly called public meeting, (b) seen and signed by a majority of the municipal officers acting individually and separately, or (c) signed as otherwise provided by law for the disbursement of employees' wages and benefits and payment of municipal education costs.

[Jay, Maine](#)[Town Ordinances](#)[Home](#)

TOWN OF JAY

ADMINISTRATION

EMERGENCY MANAGEMENT

ORDINANCE

ENACTED: June 10, 2008

TOWN OF JAY

Administration

Emergency Management Ordinance

1 Title and Authority

This Ordinance shall be known and may be cited and referred to as the "Emergency Management Ordinance of the Town of Jay". Authorized under Title 37-B M.R.S.A., Section 782.

2 Purpose

It is the intent and purpose of this Ordinance to establish an Emergency Management Agency in compliance and in conformity with the provisions of Title 37-B, MRSA, Section 781 et seq., to ensure the complete and efficient utilization of the Town's facilities and resources to combat disaster as defined herein.

3 Definitions

The following definitions shall apply in the interpretation of this Ordinance:

Emergency Management Agency - "Emergency Management Agency" means the agency created under this Ordinance for the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, in order to minimize and repair injury and damage resulting from disasters or catastrophes caused by enemy or terrorist attacks, sabotage, riots or other hostile action, or by fire, flood, earthquake or other natural or man-made causes. These functions include, without limitation, firefighting, police, medical and health, emergency welfare, rescue, engineering, public warning and communications services; evacuation of persons from stricken areas; allocation of critical materials in short supply; emergency transportation; other activities related to civilian protection and other activities necessary to the preparation for the carrying out of these functions.

Emergency Management Agency Forces - "Emergency Management Agency Forces" means the employees, equipment and facilities of all Town Departments, boards, institutions and commissions; and in addition, it shall include all volunteer persons, equipment and facilities contributed by or obtained from volunteer persons or agencies.

Director - "Director" means the Director of the Town of Jay Emergency Management Agency, appointed as prescribed in this Ordinance.

Disaster - "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause including, but not limited to, fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination requiring emergency action to avert danger or damage,

epidemic, air contamination, critical material shortage, infestation, explosion or riot.

4 Organization

Under the direction of the Fire and Rescue Chief, the EMA Director shall be responsible for the agency's organization, administration and operation.

The Board of Selectmen shall review the existing operational organization to ascertain the agency's ability to cope with its responsibilities and shall approve the Town's Emergency Operations Plan.

5 Appointment of Director; Duties and Responsibilities

The Board of Selectmen shall appoint an Emergency Management Agency Director, who shall coordinate the activities of all Town Departments, organizations and agencies for civil emergency preparedness within the town and maintain a liaison with other emergency management agencies, public safety agencies, and have such additional duties as prescribed by the Fire and Rescue Chief.

6 Rules and Regulations

The EMA Director shall prepare, under the direction of the Fire and Rescue Chief, such policies as may be deemed necessary for the administration and operational requirements of the agency, which policies must be approved by the Board of Selectmen prior to becoming effective.

7 Emergency Proclamation

The Town Manager shall have the power and authority, after consultation with the Chairman of the Board of Selectmen, to issue a proclamation that an emergency exists whenever a disaster or civil emergency exists or appears imminent. The proclamation may declare that an emergency exists in any or all sections of the town.

If the Town Manager is temporarily absent from the town or otherwise unavailable, the person designated by the Town Manager may issue the proclamation that an emergency exists. If neither the Town Manager nor the person designated to act in the Town Manager's absence is available, then the following persons shall have the power and authority to issue a proclamation that an emergency exists, in the following order of succession: the Chairman of the Selectman, the EMA Director, the Fire Chief, the Police Chief, and the Public Works Director. A copy of such proclamation shall be filed within twenty-four (24) hours in the office of the Town Clerk.

Notwithstanding the above, when consultation with the Chairman of the Board of Selectmen would result in a substantial delay in an effective response in alleviating or preventing an emergency or disaster, the Town Manager, or their successor as outlined above, is authorized to take whatever actions are necessary to prevent the loss of life and property in the town.

The Town Manager and the EMA Director shall be responsible for submitting a full report to the Board of Selectmen of all actions taken as a result of the declared emergency as soon as the Board of Selectmen can be convened.

8 Termination of Emergency

When the Town Manager or their successor as outlined above is satisfied that a disaster or civil emergency no longer exists, the Town Manager or their success shall terminate the emergency proclamation by another proclamation affecting the sections of the Town covered by the original proclamation, or any part thereof. Said termination of emergency shall be filed in the office of the Town Clerk.

9 Town Manager's Duties and Emergency Powers

During any period when an emergency proclamation is in effect, the Town Manager may promulgate such regulations, as necessary to protect life and property and to preserve critical resources within the purposes of this Ordinance. Such regulations may include, but are not limited to, the following:

1. Regulations prohibiting or restricting the movement of vehicles in areas within or outside of the town;
2. Regulations facilitating or restricting the movement of persons within the town;
3. Regulations pertaining to the movement of persons from hazardous areas within the town;
4. Such other regulations necessary to preserve public peace, health and safety.

Nothing in this section shall be construed to limit the authority or responsibility of any Department to proceed under powers and authority granted to them by state statute or Town of Jay Ordinance.

The Town Manager or designee may order the evacuation of persons from hazardous areas within the town.

The Town Manager or designee shall be authorized to request aid or assistance from the state or any political subdivision of the state and may render assistance to other political subdivision under the provisions of Title 37-B, M.R.S.A.

The Town Manager may obtain vital supplies, equipment, and other items found lacking and needed for the protection of health, life and property during an emergency without following normal purchasing or formal bid procedures.

The provisions of this section will terminate at the end of the declared emergency.

10 Emergency Operational Plans

The EMA Director shall prepare an all hazard emergency operational plan for the Town, which shall be submitted to the Board of Selectmen for approval.

It shall be the responsibility of all municipal Departments and agencies to perform the functions assigned and to maintain their portions of the plan in a current state of readiness. The Town plan shall be reviewed periodically by the Town Manager in conjunction with all the Town Department Heads and the EMA Director.

11 Immunity from Liability

All Emergency Management Agency Forces, while engaged in Emergency Management Agency activities, shall be immune from liability, as set forth in Title 37-B, Section 822 M.R.S.A.

12 Compensation for Injuries

All Emergency Management Agency Forces will be deemed to be employees of the Town when engaged in training or on duty and shall have all of the rights of town employees under the Workmen's Compensation Act, as set forth in Title 37-B, Section 823 M.R.S.A.

13 Violation of Regulations

It shall be unlawful for any person to violate any provisions of this Ordinance or of the regulations or plans issued pursuant to the authority contained herein, or to obstruct, hinder or delay any Emergency Management Agency Forces as herein defined in the enforcement of the provisions of this Ordinance or any regulation or plan issued hereunder.

14 Enforcement

The Jay Police Department shall enforce this Ordinance. The Town may also seek injunctive relief for violations of this Ordinance or of the rules or plans promulgated hereunder.

15 Penalty

Any person, firm or corporation violating any provision of this Ordinance or any rule or regulation promulgated hereunder, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00) and the costs of prosecution.

16 Conflicting Ordinances, Orders, Rules and Regulations Suspended

At all times when an emergency proclamation is in effect the orders, rules and regulations made and promulgated pursuant to this Ordinance shall supersede all existing Ordinances,

orders, rules and regulations, insofar as the latter may be inconsistent herewith.

17 Amendments

- A. An amendment to this Ordinance may be initiated by:
 - 1. The Board of Selectmen, provided a majority of the Board of Selectmen has so voted; or
 - 2. Written petition of a number of voters equal to at least ten percent (10%) of the number of votes cast in the municipality at the last gubernatorial election.
- B. The Board of Selectmen shall hold a public hearing on the proposed amendment. Notification of the hearing shall be posted and advertised in a newspaper of general circulation in the municipality at least seven (7) days prior to the hearing.
- C. The vote on any proposed changes will be taken at the next scheduled town meeting.

18 Validity and Severability

Should any provisions of this Ordinance be declared invalid for any reason, such declaration shall not affect the validity of other provisions or of this Ordinance as a whole, it being the legislative intent that the provisions of this Ordinance shall be severable and remain valid notwithstanding such declaration.

19 Effective Date

The effective date of this Ordinance shall be the date this Ordinance is adopted by the voters at Town Meeting.

**JAY
ENVIRONMENTAL CONTROL
AND
IMPROVEMENT ORDINANCE**

ENACTED: MAY 21, 1988

AMENDED: MARCH 20, 1989

JUNE 19, 1989

OCTOBER 23, 1989

JUNE 18, 1990

MARCH 18, 1991

MARCH 16, 1992

MARCH 15, 1993

NOVEMBER 22, 1993

MARCH 21, 1994

JUNE 20, 1994

JUNE 19, 1995

DECEMBER 18, 1995

JUNE 17, 1996

NOVEMBER 25, 1996

SEPTEMBER 25, 2000

SEPTEMBER 29, 2003

DECEMBER 19, 2005

APRIL 27, 2009

This edition contains ordinance amendments through the Twenty-Third Ordinance Amending the Jay Environmental Control and Improvement Ordinance, enacted April 27, 2009.

Jay Environmental Control and Improvement Ordinance

CHAPTER

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Preface

GENERAL

The Jay Environmental Control and Improvement Ordinance is a comprehensive regulatory plan to protect and enhance the public health and environment of the Town of Jay and to prevent threats to health and the environment posed by the discharge of pollutants to air, water and land. The Ordinance was the result of a lengthy and thorough consideration to harmonize with federal, state and local environmental laws and regulations. The purposes and policies of the Ordinance are set forth in Section 1-102.

The Ordinance prohibits certain activities that may adversely affect public health and the environment and regulates subdivisions, landfills, point source discharges into water and emissions of air contaminants through permits issued and enforced by the Planning Board.

ORGANIZATION AND HISTORY

The Ordinance is divided into chapters for general application and chapters for specific environmental concerns. Chapter 1 encompasses the purposes and policies of the Ordinance, statement of authority, and definitions. Chapter 2 establishes the organization and powers of the Planning Board and the Code Enforcement Officer. Chapter 3 sets forth general content requirements for applications, procedures for hearings on applications, fees and appeals procedures. Additional application information requirements for subdivisions, landfills, water discharges and air emissions are prescribed in the chapters pertaining to those topics. Chapters 4A and 4B establish procedures for permit administration and investigations and administrative enforcement actions by the Code Enforcement Officer, Environmental Enforcement Counsel and the Planning Board, for judicial enforcement, and penalties. Chapter 5 regulates subdivisions. Chapter 9 regulates landfills. Chapter 12 regulates water pollution from point sources and Chapter 13 regulates air pollution. The Ordinance also includes three volumes of referenced codes. Each volume includes one or more loose-leaf binders.

The Ordinance was first enacted by vote at a Town Meeting on May 21, 1988. Since its enactment, the Ordinance has been amended twenty-two times, primarily to reflect changes in state and federal law. The First, Second, Third and Fourth Ordinances Amending the Ordinance were enacted on March 20, 1989. The Fifth Ordinance was enacted on June 19, 1989, the Sixth and Seventh Ordinances on October 23, 1989, the Eighth Ordinance on June 18, 1990, the Ninth Ordinance on March 18, 1991, the Tenth Ordinance on March 16, 1992, the Eleventh Ordinance on March 15, 1993, the Twelfth Ordinance on November 22, 1993, the Thirteenth Ordinance on March 21, 1994, the Fourteenth Ordinance on June 20, 1994, the Fifteenth Ordinance on June 19, 1995, the Sixteenth Ordinance on December 18, 1995, the Seventeenth Ordinance on June 17, 1996, the Eighteenth Ordinance on November 25, 1996, the Twentieth Ordinance on September 25, 2000, the Twenty-First Ordinance on September 29, 2003, the Twenty-Second Ordinance on December 19, 2005 and the Twenty-Third Ordinance on April 27, 2009. The Nineteenth Ordinance proposed on June 21, 1999 was not enacted.

This edition of the Ordinance reflects the changes that have occurred through the Twenty-Third Ordinance. Each section amended since original enactment on May 21, 1988, is annotated to include the number and section of the amending ordinance. For example, the notation "First, Sec. 2" following

Section 1-102 means that Section 1-102 was amended by Sec. 2 of the First Ordinance Amending the Jay Environmental Control and Improvement Ordinance.

The Town of Jay may revise the Ordinance at annual or special town meetings to accommodate changes in state and federal law. Persons referring to this Ordinance should obtain from the Town Office any amending ordinances subsequent to the Twenty-Third Ordinance in order to review a current and complete version of the Ordinance.

Sixteenth, Sec. 3. Seventeenth, Sec. 3 and 4. Eighteenth, Sec. 3. Twentieth, Sec. 3. Twenty-First, Sec. 3. Twenty-Second, Sec. 3, Twenty-Third, Sec. 3.

REFERENCED CODES

Various sections of the Ordinance refer to statutes, regulation and guidelines administered by the United States Environmental Protection Agency and agencies of the State of Maine. The Jay Ordinance adopts certain of these provisions as its own. For example, Chapter 9 of the Ordinance, Solid Waste Disposal Facilities, adopts Chapters 400-409 of the Maine Solid Waste Management Rules. Chapter 12, Water, adopts the effluent guidelines and standards of 40 Code of Federal Regulation (“CFR”) Parts 129, 401-471.

The codes incorporated by reference may be found in three volumes filed with the Ordinance in the Town of Jay office. Each volume includes one or more looseleaf binders. A Table of Contents is located at the beginning of each binder. Volume I includes the codes referenced in Chapters 1-9 of the Ordinance, covering Subdivisions and Solid Waste Disposal Facilities. Volume II includes codes referenced in Chapter 12, Water. Volume III includes codes referenced in Chapter 13, Air Pollution.

Federal regulation are amended by publication of the amended portions in the Federal Register. Each CFR section and the corresponding Federal Register amendments are filed under the same tab and should be read together in the referenced codes volumes.

The Town of Jay has revised the contents of the volumes on seven occasions to delete superseded regulations and to include changes in regulations. The Town will continue to revise the referenced codes volumes regulations to reflect changes in state and federal law.

Referenced Codes

VOLUME I, Codes Referenced in Chapters 1-9

1. An Act Regarding Minimum Lot Sizes and Other Municipal Regulations Concerning Mobile Home Parks, 30-A M.R.S.A. Section 4358(3),
2. Maine Department of Environmental Protection, Maine Solid Waste Management Rules, Chapters 400, 401, and 405.
3. 40 CFR Part 264.147(f), Financial Test for Liability Coverage
4. Maine Primary Drinking Water Standards, adopted pursuant to 22 M.R.S.A. Section 2611
5. Maine Maximum Exposure Guidelines
6. Test Methods for Evaluating Solid Wastes, USEPA, SW-846, 3rd Edition
7. Waste Analysis Plans, A Guidance Document, USEPA, EPA/530-SW-84-012, October 1984
8. Procedures for Handling and Chemical Analysis of Sediment and Water Samples, USEPA/Corps of Engineers, May 1981
9. Methods for Chemical Analysis of Water and Wastes, USEPA, EPA600/4-79-020, March 1983
10. Standard Methods for the Examination of Water and Wastewater, APHA/AWNA/WPCF, 16th Edition
11. Minimum Lot Size Law, 12 M.R.S.A. Section 4807 et seq.

Referenced Codes

VOLUME II, Codes Referenced in Chapter 12

1. 40 CFR Part 136
2. Effluent Guidelines and Standards
 - a. 40 CFR Part 129
 - b. 40 CFR Part 401
 - c. 40 CFR Parts 405-436
 - d. 40 CFR Part 439
 - e. 40 CFR Part 440
 - f. 40 CFR Part 443
 - g. 40 CFR Part 446
 - h. 40 CFR Part 447
 - i. 40 CFR Part 454
 - j. 40 CFR Part 455
 - k. 40 CFR Parts 457-461
 - l. 40 CFR Parts 463-469
 - m. 40 CFR Part 471
3. 40 CFR Part 403, General Pretreatment Regulations
4. 38 M.R.S.A. Chapter 3, Article 4-A, Sections 464, 465, 465-A, 465-C, 466, 467
5. Maine Department of Environmental Protection, Chapter 580, Regulations Relating to Sampling Procedures and Analytical Procedures
6. National Recommended Water Quality Criteria: 2002 (Nov. 2002) (U.S. EPA) (water criteria as developed by EPA pursuant to section 304(a) of the Clean Water Act)

VOLUME III, Codes Referenced in Chapter 13

1. 40 CFR Part 50, National Primary and Secondary Ambient Air Quality Standards and Appendices
2. 40 CFR Part 60, Standards of Performance for New Stationary Sources; subparts A, D, Da, Db, Dc, E, K, Ka, O, BB, GG, and Appendices.
3. 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants; subparts A, E and V
4. Clean Air Act, Section 171, 42 U.S.C. Section 7501 as of 12/93
5. Clean Air Act, Sections 111 and 112, 42 U.S.C. Sections 7411 and 7412, as of 12/93
6. Maine Department of Environmental Protection, Chapter 114, Classification of Air Quality Control Regions
7. State of Maine, Department of Human Services, Derivation of Interim Exposure Guidelines for the Hazardous Air Pollutant Program, 5/90
8. 40 CFR Part 58, Appendix B
9. 40 CFR Part 63, National Emission Standards for Hazardous Pollutants; subparts A, Q, S, MM, PP, QQ, RR, VV, JJJJ, and DDDDD and Appendices.
10. 40 CFR Part 51 and Appendices
11. 40 CFR Part 52 and Appendices
12. 40 CFR Part 53 and Appendices
13. 40 CFR Part 70
14. Amendments to Pulp and Paper NESHAP in 40 CFR Part 9, 65 FR 80755
15. Clean Air Act, Section 182(f)
16. 40 CFR Part 75

Ninth, Sec. 12. Tenth, Sec. 5. Eleventh, Sec. 5. Thirteenth, Sec. 5. Fifteenth, Sec. 3. Seventeenth, Sec. 5, 5-A, 5-B, 5-C, 5-D and 5-E. Seventeenth, Sec. 123. Twenty-First, Sec. 4. Twenty-Second, Sec. 4.

CHAPTER 1

GENERAL PROVISIONS

Part

1. Short Title, Purposes, Policies and Authority
2. General Definitions

PART 1

SHORT TITLE, PURPOSES, POLICIES AND AUTHORITY

Section

- §1-101 Short Title
- §1-102 Purposes and Policies
- §1-103 Authority
- §1-104 Territorial Application
- §1-105 Severability
- §1-106 Effective Date and Applicable Dates
- §1-107 Savings Clause
- §1-108 Other Rights

§1-101 SHORT TITLE

This Ordinance shall be known and may be cited as the “**Jay Environmental Control and Improvement Ordinance**”.

§1-102 PURPOSES AND POLICIES

A. The purposes and policies of this Ordinance are:

The Town of Jay has enacted this Ordinance for the purpose of protecting the public health, safety and welfare of the inhabitants of the Town of Jay and for protecting and enhancing the Town of Jay's environment. This Ordinance is enacted pursuant to the Home Rule powers bestowed upon the Town of Jay by the Constitution and laws of the State of Maine. This Ordinance is intended to provide a comprehensive scheme of environmental regulation at the local level in furtherance of the

CHAPTER 1

policies espoused by federal and state environmental laws and regulations for the protection of the human health and environment. This Ordinance is enacted to prevent threats to the public health and environment posed by the discharge of pollutants and contaminants, whether to air, water or land.

This Ordinance is the result of a lengthy and thorough consideration of the alternatives available to the Town of Jay for protecting the human health and environment and this Ordinance seeks to harmonize with federal, state and local environmental laws and regulations. Therefore, to the extent feasible, procedures under this Ordinance will encourage cooperation and sharing of information with other permitting agencies of government and devise forms and filing requirements which correspond to or can be satisfied by those employed by other governmental agencies. Where it aids the timely execution of these duties, the Board may consent to hold hearings jointly with other agencies of government considering similar permits or approvals.

In addition to the foregoing, the purposes and policies of this Ordinance are:

1. To provide for the protection of the human health and environment in the Town of Jay;
2. To conserve and protect the Town of Jay's natural resources including its flora and fauna;
3. To provide for the protection of surface water, ground water and drinking water in the Town of Jay;
4. To provide for water quality which will enhance the protection and propagation of fish and wildlife and will provide for recreation in and on state waters within the Town of Jay;
5. To control and monitor through a permitting system the amount of pollution which can be discharged or emitted into the Town of Jay's environment;
6. To foster local control of the environment through the exercise of the Town of Jay's home rule authority:
 - a. By bestowing certain powers and duties upon the Town of Jay's Planning Board and the Town of Jay's Code Enforcement Officer;
 - b. By establishing uniform procedures and guidelines for the protection of public health, welfare and safety and the environment during emergency conditions which create or are likely to create a substantial and immediate danger;
 - c. By providing uniform procedures and guidelines to protect the public health, welfare and safety and the environment, including air, water, and land;
 - d. By providing procedures for abating and controlling the pollution of the Town of Jay's environment; and
 - e. By providing a system for the imposition of penalties, stop orders and injunctions for violations of this Ordinance in order to foster compliance with this Ordinance and the terms and conditions of any permits, orders or approvals issued pursuant to this Ordinance;
7. To implement Federal and State policies that encourage municipalities to regulate the environment;

8. To provide for the careful planning, analysis, and management of air contaminants, pollutant and contaminant discharge, solid waste disposal and land use in the Town of Jay to prevent damage to human health and the environment;
9. To restore and maintain the chemical, physical, and biological integrity of the Town of Jay's air, water and land;
10. To control, regulate, abate, reduce, and prevent pollution of the Town of Jay's air by smoke, dust, fumes, particulate matter, gases, odors, mists, vapors, and similar matters or any combination thereof;
11. To control, regulate, abate, reduce, and prevent pollution of the Town of Jay's waters by the discharge of pollutants or contaminants in such waters;
12. To control, regulate, abate, reduce, and prevent pollution of the Town of Jay's land, air and waters by solid waste disposal;
13. To regulate open dumping of solid waste which is a potential source of contamination of drinking water supplies, ground water and surface water;
14. To provide for solid waste management in the Town of Jay;
15. To provide uniform procedures and standards in regulating and approving subdivisions in the Town of Jay;
16. To provide protection for the Town of Jay's natural resources, which will protect and preserve property values, recreational opportunities and the quality of life of the inhabitants of the Town of Jay;
17. To provide a comprehensive system and clear guidelines for protecting the environment of the Town of Jay, including air, water, solid waste disposal and land use concerns; and
18. To encourage pollution prevention through appropriate voluntary, cooperative and collaborative activities involving representatives of the Town and others including individuals and companies residing or doing business in Jay; provided, however, nothing said or done by any one or more members of the Planning Board or the Code Enforcement Officer or any other representative of the Town of Jay in any such collaborative or cooperative program shall be legally sufficient to work any estoppel or otherwise to commit or bind the Board or the Town on any issue relating to any provision of this Ordinance or any permit or order issued hereunder.

B. This Ordinance shall be liberally construed to effectuate its purposes and policies.

First, Sec. 2. Thirteenth, Sec. 6. Fourteenth, Sec. 4. Seventeenth, Sec. 6 and 7.

CHAPTER 1

§1-103 AUTHORITY

This Ordinance is enacted pursuant to the Constitution of the State of Maine and the laws of the United States of America and the laws of the State of Maine.

First, Sec. 3. Fifth, Sec. 2. Tenth, Sec. 6. Seventeenth, Sec. 8.

§1-104 TERRITORIAL APPLICATION

This Ordinance applies to all persons conducting activities in the Town of Jay which are regulated by this Ordinance.

§1-105 SEVERABILITY

If any provision or section of this Ordinance, or the application thereof to any person or circumstance, is held void or invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect in whole or in part without the invalid provision or application, and to this end each provision of this Ordinance is declared to be severable and independent. It is the intent of the Town of Jay that each and every part, clause, paragraph, section and subsection of this Ordinance be given effect to the degree possible.

§1-106 EFFECTIVE DATE AND APPLICABLE DATES

A. This Ordinance shall be effective upon enactment by the annual town meeting or a special town meeting of the Town of Jay. It shall apply immediately to all new sources of pollution, the construction or operation of which begins after the date of such enactment. Sections 9-701 and 9-801 of this Ordinance shall also apply immediately upon enactment to the closure of a solid waste landfill that occurs after the date of such enactment.

B. The Board shall approve and furnish forms as required by this Ordinance for each permit or approval. Within six (6) months of the Board's approval of the form of application for any permit or approval required under this Ordinance, every person subject to this Ordinance shall file with the Board an application for each such permit or approval required.

C. Any existing use, activity or discharge of a pollutant or contaminant in the Town of Jay at the time of enactment of relevant portions of this Ordinance which is subject to regulation pursuant to this Ordinance, is deemed an "Existing Use." Any person owning or operating an Existing Use shall make application for all permits or approvals governing activities subject to this Ordinance within six (6) months after the Board approves the forms for applications under any provision of this Ordinance. During this period for application an Existing Use may continue to operate under the operating conditions and levels affecting the discharge of pollutants or contaminants at the time of enactment of relevant portions of this Ordinance and as permitted or allowed by state and federal law, permits, licenses or approvals.

Existing Uses may not continue to operate without the required permit(s) or approval(s) under this Ordinance beyond a point six (6) months after the Board approves the forms for applications under

any provision of this Ordinance; provided, however, that the owner or operator of an Existing Use who has made timely application for all necessary permits or approvals under this Ordinance and pays the application fees when due in accordance with Section 3-113(A), shall be allowed to continue under the operating conditions and levels affecting discharge of pollutants or contaminants as of the effective date of said provision of the Ordinance until such time as the Board has acted in the negative to deny a particular required permit or approval. Permission for an Existing Use to continue to operate pending a decision of the Board may be extended by the Board for good cause or with consent of the Applicant. Nothing in this provision is meant to override or contradict the obligations of any agencies of government to protect the public health, safety, welfare and environment against public nuisances or imminent threats.

D. Prior to the termination of an existing permit or approval under this Ordinance, an Applicant subject to this Ordinance shall make reapplication for a renewed or new permit or approval at least one-hundred eighty (180)days prior to the specified termination of said permit or approval. Only if such application is timely made in a complete and satisfactory manner, the applicant shall be entitled to continue operation under the current permit or approval past the specified termination date of same, until the Board renders a decision on the application for renewal or new permit.

First, Sec. 4. Sixth, Sec. 2.

§1-107 SAVINGS CLAUSE

Nothing in this Ordinance may be construed to affect any substantive right or obligation gained by any person solely under the provisions of any law repealed or amended by this Ordinance. All substantive rights and obligations created under the provisions of any law repealed or amended by this Ordinance continue in effect.

All officers, officials or other persons elected, appointed, hired or otherwise selected to act in any capacity under provisions repealed or amended by this Ordinance shall continue in that capacity under the provisions of this Ordinance.

First, Sec. 5.

§1-108 OTHER RIGHTS

Nothing in this Ordinance is intended, nor shall be construed, to limit, impair, abridge, create, enlarge or otherwise affect, substantively or procedurally, the right of any person to damages or other relief on account of injury to persons or property due to any violation of this Ordinance or to activity subject to this Ordinance and to maintain any action or other appropriate procedure therefor; nor to so affect the powers of the State to initiate, prosecute and maintain actions to abate public nuisances.

Nothing in this Ordinance is intended, nor shall be construed, to limit, impair or abridge, substantively or procedurally, the powers of the Town of Jay under state or common law to protect the general health, safety and welfare by initiating, prosecuting and maintaining actions concerning activities not in violation of this Ordinance.

First, Sec. 6. Sixth, Sec. 3.

CHAPTER 1

PART 2

GENERAL DEFINITIONS

Section

§1-201 General Definitions

§1-201 GENERAL DEFINITIONS

Subject to additional definitions contained in the subsequent Chapters of this Ordinance which are applicable to specific parts or parts thereof, and unless the context otherwise requires, in this Ordinance the following terms have the following meanings:

A. Applicant. “Applicant” means any person applying for a permit, certification, approval, or similar form of permission, or a modification, repeal or renewal thereof, from the Jay Planning Board.

A-1. Begin Construction. “Begin construction” means, in general, initiation of physical onsite construction activities which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities, which mark the initiation of the change.

B. Board. “Board” means the Jay Planning Board.

C. B.T.U. “B.T.U.” means British Thermal Units.

D. Code Enforcement Officer. “Code Enforcement Officer” means the Jay Code Enforcement Officer.

E. Day. “Day” means calendar day.

E-1. Existing Source. “Existing source” means any source of a pollutant or contaminant within the Town of Jay which began construction, operation or discharge prior to the time of enactment of relevant portions of this Ordinance.

F. Contaminant. “Contaminant” means any substance that is spilled, discharged, leaked, pumped, poured, emitted, emptied, discharged, injected, escaped, leached, dumped, or disposed into the environment of the Town of Jay in sufficient quantities or of such characteristics or duration as to be injurious to humans, plant or animal life or property, or which unreasonably interferes with the enjoyment of life or property in the Town of Jay.

G. Facility. “Facility” means any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft from which there is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escape, leaching, dumping or disposing of a pollutant or containment into the environment.

H. Interested Person. “Interested Person” means any person having a property right or interest in a facility or who may be aggrieved by the granting, modification, repeal or denial of any permit, approval or order by any proceeding under this Ordinance. The meaning must be determined according to the particular purposes of, and matter involved in, any proceeding.

I. Issuing Authority. “Issuing Authority” means the Board.

J. Jay Air Emission Permit. “Jay Air Emission Permit” means the permit which may be issued by the Board pursuant to Sections 13-101 et seq. of this Ordinance.

K. Jay Solid Waste Disposal Facility Permit. “Jay Solid Waste Disposal Facility Permit” means any Solid Waste Disposal Facility Permit which may be issued pursuant to Sections 9-101 et seq. of this Ordinance.

L. Jay Water Permit. “Jay Water Permit” means the permit which may be issued by the Board pursuant to Sections 12-101 et seq. of this Ordinance.

L-1. M.D.E.P. “M.D.E.P.” means the Maine Department of Environmental Protection or the Maine Board of Environmental Protection.

M. New Sources of Pollution. “New sources of pollution” means any source of a pollutant or contaminant which begins construction, operation or discharge after the effective date of relevant portions of this Ordinance.

N. Ordinance. “Ordinance” means the several chapters comprising this Ordinance, as may be amended from time to time.

O. Permit. “Permit” means any permit, certificate, approval, registration, schedule of compliance or similar form of permission required or authorized by this Ordinance, and shall include but not be limited to the Jay Air Permit, Jay Solid Waste Facility Permit, Jay Water Permit and Jay Subdivision Permit, as applicable.

P. Permit Holder. “Permit holder” means a person who has received a permit pursuant to any chapter of this Ordinance.

Q. Person. “Person” means an individual, corporation, partnership, association, Federal, state or local governmental entity, or a combination thereof, and the agents of same.

R. Person Aggrieved. “Person Aggrieved” means any person who because of an act or failure to act by the issuing authority, may suffer an injury, in fact, which is different either in kind or magnitude from that suffered by the general public and which is within the scope of the interests identified in this Ordinance. Such person must specify in writing sufficient facts to allow the Board to determine whether or not the person is aggrieved.

S. Pollutant. “Pollutant” means any substance that is spilled, leaked, pumped, poured, emitted, emptied, discharged, injected, escaped, leached, dumped or disposed into the environment of the Town of Jay in sufficient quantities or of such characteristics or duration as to be potentially

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injurious to human, plant or animal life or property, or the enjoyment of life or property in the Town of Jay.

T. Respondent. “Respondent” means any person alleged to have violated any provision of this Ordinance or the terms of any permit or approval issued pursuant to this Ordinance.

U. Selectmen. “Selectmen” means the town officers elected to the Jay Board of Selectmen by the residents of the Town of Jay at the annual town meeting or a special town meeting.

V. Transfer. “Transfer” means the transfer of property which is the subject of any permit, approval or order under this Ordinance including the sale or lease of such property, or any other transaction or proceeding through which the property undergoes a change in ownership including, but not limited to, the sale of 50 percent or more of the stock of or interest in a corporation, partnership or any other entity which owns the property which is the subject of a permit, approval or order, the sale of stock in the form of a statutory merger or consolidation sale of the controlling share of the assets, change in the identity or financial reorganization of a corporation, partnership or any other entity which owns the property which is the subject of a permit, approval or order, but excluding corporation reorganization not substantially affecting the ownership of the property which is the subject of a permit, approval or order issued pursuant to this Ordinance.

First, Sec. 7, 8, 9, 10, 11, 12 and 13. Sixth, Sec. 4 and 5. Seventeenth, Sec. 9, 10, 11, 12 and 13.

CHAPTER 2

PLANNING BOARD-CODE ENFORCEMENT OFFICER

PART 1

PLANNING BOARD

Section

- §2-101 Short Title
- §2-102 Establishment
- §2-103 Composition
- §2-104 Appointment
- §2-105 Terms of Office
- §2-106 Vacancies
- §2-107 Removal
- §2-108 Compensation
- §2-109 Officers
- §2-110 Meetings, Quorum, Agenda, Materials
- §2-111 Powers and Duties
- §2-112 Appeals

Seventeenth, Sec. 14.

§2-101 SHORT TITLE

This Chapter shall be known and may be cited as the “Jay Environmental Control and Improvement Ordinance--Planning and Code Enforcement.”

§2-102 ESTABLISHMENT

The Town of Jay hereby repeals the authority for the Planning Board in existence on the effective date of this Ordinance and establishes the Jay Planning Board pursuant to Article VIII, Part Second of the Maine Constitution and the laws of the State of Maine, including, but not limited to 30-A M.R.S.A. Section 3001.

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First, Sec. 14. Fifth, Sec. 3.

§2-103 COMPOSITION

The Board shall consist of eight (8) members and up to two (2) alternate members. Members of the Board and alternate members shall be residents of the State of Maine, at least eighteen 18 years of age and citizens of the United States at all times during their terms, and shall neither be officers nor employees of the Town of Jay or any of its boards, agencies or departments.

An alternate member shall attend all meetings of the Board and participate in its proceedings, but may vote only when designated by the Chairman to sit for a member. If any member or alternate member misses three (3) or more consecutive meetings of the Board then it may be cause for removal of such member.

When a member is unable to act because of interest, physical incapacity, absence or any other reason satisfactory to the Chairman, the Chairman shall designate an alternate member to sit and vote in his or her stead.

§2-104 APPOINTMENT

The members of the Board and alternate members shall be appointed by the Board of Selectmen. The town manager or any individual selectman only shall have the authority and power to nominate one or more individuals for consideration of the Board of Selectmen for appointment to the Board. At least fourteen (14) days prior to a decision on nominees by the Board of Selectmen, the names of all nominations shall be posted by the Town Clerk in one or more conspicuous public places in the Town of Jay and notice shall be published once in a newspaper having a general circulation in the Town of Jay. The Board of Selectmen may then, in its sole discretion, hold a public hearing on the appointment of any nominee for the Board. In such case, the time period within which the Board of Selectmen shall decide upon the nomination shall be extended by up to a thirty (30) day period as the Board of Selectmen shall determine. If a public hearing is held on any nomination, the Board of Selectmen may use the notice and procedural requirements set forth in Chapter 3, Section 3-107 of this Ordinance.

Seventeenth, Sec. 15. Twenty-First, Sec. 5.

§2-105 TERMS OF OFFICE

Except for Initial Appointees as specified below, the term of each member and alternate member shall be five (5) years. Members shall serve until their successors are duly appointed, qualified and assume their duties.

Initial Appointees. Initially, and as provided in Section 2-104, two members shall serve for 1 year; two members for 2 years, two members for 3 years; two members for 4 years; and two members for 5 years. The Board of Selectmen shall determine which Initial Appointees shall serve for which number of years.

Seventeenth, Sec. 16.

§2-106 VACANCIES

The Board of Selectmen may declare a vacancy on the Board upon the nonacceptance, resignation, death, removal, permanent disability or incompetency of any member, relocation of a member's place of residence outside the State of Maine, or failure of any person to qualify for office. In such circumstances, the Board of Selectmen shall fill all positions of members or alternate members; pending any such action, the Chairman may designate an alternate member to act to fill a vacancy.

Seventeenth, Sec. 17. Twentieth, Sec. 4.

§2-107 REMOVAL

The Board of Selectmen may remove any member or alternate member of the Board for cause, after notice and hearing. The term "cause" shall mean conduct or conflict affecting the ability and fitness of the member or alternate member to perform his duties.

The notice provided hereunder shall be in writing and shall state the reasons for the proposed removal and inform the member or alternate member of his right to a hearing before the Board of Selectmen within thirty (30) days of receipt of the notice. This hearing may be held in executive session if the requirements of 1 M.R.S.A. 405, as amended by PL 1987, c. 769, Sec. 1, are met or, upon request by the member or alternate member to be removed, an open meeting may be held in accordance with 1 M.R.S.A. 401 et seq. and this Ordinance. Any meeting shall be held utilizing procedures established for enforcement hearings in Chapter 4B herein.

First, Sec. 15. Thirteenth, Sec. 8. Seventeenth, Sec. 18.

§2-108 COMPENSATION

All members and alternate members of the Board shall receive compensation at the rate of \$20 for each meeting attended.

Tenth, Sec. 7. Eighteenth, Sec. 4.

§2-109 OFFICERS

A. Election of Officers.

The Board shall, by majority vote, elect a Chairman, Vice-Chairman and Secretary at an annual organizational meeting held in September or, in the case of Initial Appointees or upon the resignation, removal or cessation of service of any of the officers, as soon thereafter as practical for the purpose of filling any vacancies. The Chairman, Vice Chairman and Secretary shall each serve a term of one year or until his or her successor is duly elected by the Board. The Chairman, Vice Chairman and Secretary may serve successive terms, if so elected.

B. Chairman.

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The Chairman shall preside at all meetings, if present, shall prepare the agenda as provided in Section 2-110 (c) herein, shall call special meetings and workshops when necessary, shall transmit reports, plans and recommendations of the Board to the appropriate governing authority, and shall fulfill all the customary functions of his or her office. The Chairman may also administer oaths.

C. Vice-Chairman.

In the absence of the Chairman, the Vice-Chairman shall act as chairperson and shall have all the powers of Chairman.

D. Secretary.

The Secretary, or any other person so employed or so designated by the Board, shall assist the Chairman in preparing the agenda for Board meetings and proceedings, send out notices for meetings, public hearings and other proceedings of the Board, record, maintain and show the vote of each member on every question in which a formal recorded vote is made under the procedure of the Board or his or her absence or failure to vote, and shall maintain a permanent record of all correspondence, findings, resolutions and determinations of the Board. All records shall be deemed public and may be inspected at reasonable times. The Secretary shall also make such certifications of Board action as may be required from time to time.

§2-110 MEETINGS, QUORUM, AGENDA, MATERIALS

A. Meetings.

Regular meetings of the Board shall be held at least monthly, or as provided by rule of the Board unless excused by the Chairman.

Special meetings may be called by the Chairman, the Chairman designated for a particular matter or any four (4) members of the Board.

The Board may hold executive sessions as provided in the Maine Freedom of Access Act, 1 M.R.S.A. 401 et seq., otherwise all meetings, hearings, proceedings and deliberations of the Board shall be open to the public in accordance with the Maine Freedom of Access Act, 1 M.R.S.A. 401 et seq.

Workshops may be called by the Chairman or members designated by the Chairman for the presentation of information. Workshops shall be informational only, shall not be used by the Board for the weighing of positions or reasons for or against a proposition, and shall not be used by the Board for the formulation of formal decisions on any matter.

Any member of the Board may voluntarily disqualify himself or herself from voting on a particular matter for any reason, including conflict. In addition, a member shall be disqualified from voting on a particular matter for any reason by a majority vote of the members present and voting, except the member whose disqualification is at issue shall not vote on his or her own disqualification.

B. Quorum.

No business shall be transacted by the Board without a quorum. A quorum shall consist of four (4) members or alternate members authorized to vote. The Board shall act by majority vote, calculated on the basis of the number of members present and voting. If less than a quorum is present, the meeting may be adjourned for a period not exceeding three (3) weeks at any one time.

C. Agenda.

No item of business or plan shall be placed on the Board agenda for any meeting unless such item or plan shall have been submitted to the Board not less than ten (10) days prior to the date of a meeting or other proceeding, provided, however, that the Board may, upon request or on its own motion, waive the 10 day advance submission requirement. The Chairman shall determine the agenda in such a manner as to facilitate the execution of the duties of the Board. The Board may table any item of business or plan to a future Board meeting.

D. Materials.

Submittals associated with an item of business or plan placed on the Board agenda shall be provided to the Board not later than ten (10) days prior to Board consideration of that submittal provided, however, that the Board may, upon request or on its own motion, waive the 10 day advance submission requirement.

First, Sec. 16. Sixth, Sec. 6. Tenth, Sec. 8. Seventeenth, Sec. 19 and 20, Twenty-Third, Sec. 4.

§2-111 POWERS AND DUTIES

The Board shall have the following powers and duties:

- A. To prepare and recommend to the Board of Selectmen a comprehensive plan as defined in 30-A M.R.S.A. Section 4301, et seq., and to review and make recommendations on all investigations, reports and plans relating to the planning and development of the Town of Jay or affecting the comprehensive plan;
- B. To hear and review applications for a Jay Subdivision Permit and to grant, grant with conditions, modify, repeal, or deny a Jay Subdivision permit;
- C. To hear and review applications for a Jay Solid Waste Disposal Facility Permit and to grant, grant with conditions, modify, repeal or deny a Jay Solid Waste Disposal Facility Permit;
- D. To hear and review applications for a Jay Water Permit and to grant, grant with conditions, modify, repeal or deny a Jay Water Permit;
- E. To hear and review applications for a Jay Air Emission Permit and to grant, grant with conditions, modify, repeal or deny a Jay Emission Air Permit;

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E-1. To administer enforcement proceedings including, but not limited to conducting enforcement hearings, to assure compliance with this Ordinance and other applicable Jay Ordinances;

F. To exercise such powers as are provided to the Board by the several Ordinances of the Town of Jay and the Constitution and laws of the State of Maine;

G. To perform such duties as delegated and requested by the Board of Selectmen; and to perform such duties as requested by other public agencies, as the Board determines is proper and appropriate;

H. To make such investigations, maps and reports relating to the planning and development of the Town of Jay as needed to fulfill the requirements of the several ordinances of the Town of Jay, the Constitution and the laws of the State of Maine;

I. To obtain such goods and services, and employ or contract with such staff, including but not limited to a Planning Director, attorneys, engineers and other professionals as may be necessary to carry out its duties hereunder and to pay for such expenses within the limits of appropriations made for the purpose;

J. To hold hearings jointly with other agencies of the government in connection with activities which are subject to the provisions of this Ordinance;

K. To issue such orders as necessary to properly administer and to ensure compliance with the Ordinance; and

L. To issue subpoenas for the attendance of witnesses or for the production of documents as follows:

1. General. At the request of the Board, or any member thereof, or at the request of the Code Enforcement Officer, the Environmental Enforcement Counsel, or an applicant in any proceeding under Chapter 3 or a respondent in any proceeding under Chapter 4-B, the presiding officer may issue subpoenas for the attendance of witnesses or for the production of documents.

2. Form. Every subpoena so issued shall bear the name of the Board, the name of the issuing officer and shall command the person to whom it is directed to attend and give testimony or produce specified documents or things at a designated time and place. The subpoena shall also advise of the quashing procedure provided herein.

3. Service. Unless receipt of the subpoena is acknowledged by the witness, it shall be served by a person who is not a party to the proceeding and is not less than 18 years of age. Service shall be made by delivering a copy of the subpoena to the person named in it and tendering the fees and mileage paid to witnesses in the superior courts of this state.

4. Return. The person serving the subpoena shall make proof of service by filing the subpoena and affidavit or acknowledgment of service with the Board. Failure to make such proof of service shall not affect the validity of such subpoena and service.

5. Quashing. On motion made promptly, and in any event before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the presiding officer may (a) quash or modify

the subpoena on a finding that it is unreasonable or required evidence not relevant to any matter in issue, or (b) condition denial of the motion on just and reasonable terms. Any person requesting a hearing on a motion to quash a subpoena shall be granted a hearing before the Board upon such motion.

6. Denial of Subpoena. The Board may condition denial of the subpoena upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

First, Sec. 17, 18 and 19. Fifth, Sec. 4. Sixth, Sec. 7. Tenth, Sec. 9. Seventeenth, Sec. 21, 22 and 23. Eighteenth, Sec. 5.

§2-112 APPEALS

An appeal from any final decision or action of the Board may be taken by any aggrieved party in accordance with Chapter 3 and Chapter 4B, as may be appropriate.

First, Sec. 20. Thirteenth, Sec. 9.

PART 2

CODE ENFORCEMENT OFFICER

§2-201 Establishment

§2-202 Appointment; Term

§2-203 Powers and Duties

§2-204 Compliance

§2-205 Investigation

§2-206 Enforcement

Thirteenth, Sec. 7.

§2-201 ESTABLISHMENT

The Town of Jay hereby establishes the office of Code Enforcement Officer and the office of Deputy Code Enforcement Officer.

Twentieth, Sec. 5.

§2-202 APPOINTMENT; TERM

The Code Enforcement Officer shall be appointed by July 1 of each year by the Board of Selectmen for a term of one year. A Code Enforcement Officer may be reappointed for an unlimited number of

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successive one year terms by the Board of Selectman. In addition, the Board of Selectmen may appoint a Deputy Code Enforcement Officer.

The Code Enforcement Officer and the Deputy Code Enforcement Officer, if any, shall be residents of the State of Maine, at least 18 years of age and citizens of the United States at all times during his or her term. The Code Enforcement Officer shall be certified, and the Deputy Code Enforcement Officer may be certified: (a) under the provisions of 38 M.R.S.A. Section 441, or its successor, as familiar with court procedures, and (b) as a code enforcement officer under the provisions of 30-A M.R.S.A. Section 4451.

The Board of Selectmen may remove a Code Enforcement Officer or the Deputy Code Enforcement Officer for cause, after notice and hearing utilizing similar procedures to those specified in Section 2-107 herein for the removal of a Board member. The term “cause” shall mean conduct or conflict affecting the ability and fitness of the Code Enforcement Officer, or the Deputy Code Enforcement Officer, to perform his or her duties. If a Code Enforcement Officer or the Deputy Code Enforcement Officer, if any, is unable to act because of interest, physical incapacity, absence or other reason satisfactory to the Board of Selectmen, the Board of Selectman shall designate another person to fill the vacancy.

First, Sec. 21. Fifth, Sec. 5. Twentieth, Sec. 6.

§2-203 POWERS AND DUTIES

A. Powers Generally.

1. The Code Enforcement Officer shall be empowered to execute the duties of his or her office in a manner necessary and proper to effectuate the provisions of this Ordinance, the Jay Shoreland Zoning Ordinance and other ordinances of the Town of Jay.
2. The Code Enforcement Officer shall have the power to enter any property at reasonable hours and to enter any building with the consent of the property owner, occupant or agent, to inspect the property or structure for compliance with this Ordinance, the Jay Shoreland Zoning Ordinance and other Ordinances of the Town of Jay.
3. The Code Enforcement Officer shall have the power to represent the Town of Jay in District Court in the prosecution of alleged violations of this Ordinance, the Jay Shoreland Zoning Ordinance and other ordinances of the Town of Jay.
4. The Code Enforcement Officer shall have the power to obtain such goods and services and to contract with attorneys, engineers and other professionals as may be necessary to carry out his or her duties hereunder within the limits of appropriations made for the purpose.
5. The Deputy Code Enforcement Officer shall have the powers duties, obligations, and liabilities of the Code Enforcement Officer when the Code Enforcement Officer is absent or unable to perform the duties of Office. The Code Enforcement Officer may distribute the duties of Office to the Deputy Code Enforcement Officer as deemed necessary for economy and efficiency in administration.

B. Duties.

The duties of the Code Enforcement Officer shall be to enforce this Ordinance, the Jay Shoreland Zoning Ordinance and other ordinances of the Town of Jay that specifically authorize enforcement by the Code Enforcement Officer.

Thirteenth, Sec. 10. Twentieth, Sec. 7. Twenty-First, Sec. 6.

§2-204 COMPLIANCE

The Code Enforcement Officer shall be responsible for overseeing compliance with the provisions of the Ordinance and the terms of any permits issued pursuant to the Ordinance as set forth in Chapters 3 and 4A and compliance with the Jay Shoreland Zoning Ordinance and the Jay Floodplain Management Ordinance.

Thirteenth, Sec. 11.

§2-205 INVESTIGATION

The Code Enforcement Officer may investigate alleged violations of this Ordinance as set forth in Chapter 4A.

Thirteenth, Sec. 12. Fourteenth, Sec. 5.

§2-206 ENFORCEMENT

The Code Enforcement Officer shall act in an advisory capacity to the Board during any enforcement proceedings, including enforcement hearings as set forth in Chapter 4B.

Thirteenth, Sec. 13.

CHAPTER 3

ADMINISTRATIVE

Section

- §3-101 Application Requirements
- §3-102 Public Notice of Application
- §3-103 Public Access to Information
- §3-104 Confidentiality
- §3-105 Board Decisions
- §3-106 Action Prior to Hearing or Final Decision
- §3-107 Public Hearings
- §3-108 General Evidence
- §3-109 Documentary and Real Evidence
- §3-110 The Record and Burden of Proof
- §3-111 Proposed Findings and Conditions
- §3-112 Permit Conditions
- §3-113 Appeals
- §3-114 Advisory Rulings
- §3-115 Environmental Reserve Fund and Fees
- §3-116 Forms
- §3-117 Service and Filing of Documents
- §3-118 Computation and Enlargement of Time
- §3-119 Orders and Decisions Effective
- §3-120 Revocation, Modification or Suspension of Permits

Tenth, Sec. 10. Thirteenth, Sec. 14. Seventeenth, Sec. 24. Twenty-Second, Sec. 6.

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§3-101 APPLICATION REQUIREMENTS

A. Contents of Application.

1. Forms. Application forms shall be promulgated by the Board and shall require sufficient information as the Board deems necessary or desirable in order to process the application for a permit in accordance with the provisions of this Ordinance.

2. Modification of a Permit. Any request by an applicant for a modification of a permit issued pursuant to this Ordinance shall comply with the provisions for application for a permit as contained in this Ordinance. The Applicant may incorporate by reference materials already in the permit record and which may be conveniently identified; by procedural order, the Board may order the Applicant to reproduce additional copies of materials previously filed for the convenience of the Board or the Board's Staff in reviewing the modification application.

3. Projects Requiring More Than One Application. Upon receipt of an application for a permit for an activity which will require more than one permit from the Board, the Board may require the applicant to submit all other required permit applications prior to the Board's consideration of any application.

4. Title, Right or Interest. The Board will consider an application only when the applicant has demonstrated sufficient title, right, or interest in all of the property which is the subject of such permit. An applicant shall demonstrate in writing, and by affidavit when so designated by the Board, sufficient title, right, or interest, as follows:

a. When the applicant owns the property or an easement(s) on the property, a copy of the deed(s) or easement(s) to the property shall be supplied;

b. When the applicant is a lessor or lessee of the property, a copy of the lease shall be supplied. The lease shall be of sufficient duration, as determined by the Board, to permit construction and reasonable use of the property including reclamation, closure and post closure care, where required;

c. When the applicant has an option to buy or lease the property, a copy of the option agreement shall be supplied. Option agreements shall contain terms deemed sufficient by the Board to establish future title or a leasehold of sufficient duration to permit construction and reasonable use of the property including reclamation, closure and post closure care, where required;

d. When the applicant has eminent domain power over the property, evidence shall be supplied as to the ability and intent to use the eminent domain power to acquire sufficient title, right, or interest as determined by the Board;

e. When the applicant has either a valid preliminary permit or a notification of acceptance for filing of an application for a license or amendment of a license

from the Federal Energy Regulatory Commission for the site which is proposed for development or use, a copy of that permit or notification shall be supplied; or

f. When the applicant has a written agreement with the landowner which permits the applicant to spread or apply waste material that will be utilized by the landowner over an extended period of time, a copy of that agreement shall be supplied.

5. Service. All applications shall contain a designation of a person in the State of Maine on whom all orders and notices may be served and to whom all other correspondence regarding the application should be sent.

6. Copies of Federal and State Permits. The applicant shall, as part of the application process, submit to the Board copies of the most recent federal and state pollution control permits, approvals and licenses, including renewals, modifications, or extensions thereto, regulating an activity for which a permit is sought under this Ordinance. In addition, the applicant shall make available for inspection and copying all monitoring required by any state or federal permits and licenses; operating and maintenance records; records documenting spills, accidental discharges or emissions, and all other unlicensed discharges, emissions and releases; and reports on which the permits or licenses were based.

B. Continuing Data Requirements. The applicant shall have a continuing duty to provide copies of all renewed or modified federal and state pollution control permits, approvals and licenses as well as accompanying reports, applications and records of data, for activities which also have or require a permit under this Ordinance and to inform the Board promptly in writing of any modification, suspension or revocation of any such federal and state permits, approvals and licenses, and any official communication from any federal or state official or agency alleging non-compliance with any ordinance, statute, regulation, permit, approval or license.

First, Sec. 22. Sixth, Sec. 8. Thirteenth, Sec. 15. Fourteenth, Sec. 6 and 7. Seventeenth, Sec. 25.

§3-102 PUBLIC NOTICE OF APPLICATION

A. Except as provided in Chapter 5, Section 5-402(F), and Chapter 9, Section 9-403(E), the Board shall, within 10 days of the date on which an application for a new permit, permit renewal, or a permit transfer was filed, cause to be given public notice of the filing, inviting within twenty (20) days written comments on the application.

B. Except as provided in Chapter 5, Section 5-402(F), the Board shall, within 15 days of the date an application for a new permit, permit renewal or a permit transfer has been determined acceptable for processing by the Board in accordance with Section 3-105(A), cause to be given public notice of the Board's determination, inviting within thirty (30) days written comments on the application and requests for public hearing. Requests for public hearing shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.

Such notice shall include the following information:

1. Name and address of the applicant;
2. Title and legal citation of the Ordinance under which the application is being processed;

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3. Location of the proposed activity;
4. Summary of the proposed activity; and
5. Telephone number and mailing address of the Town official to whom written comments and hearing requests should be directed.
6. The date by which public comment must be received.

First, Sec. 23. Sixth, Sec. 9. Eleventh, Sec. 6. Thirteenth, Sec. 16. Twentieth, Sec. 8 Twenty-Second, Sec. 5, Twenty-Third, Sec. 5.

§3-103 PUBLIC ACCESS TO INFORMATION

A. Except as expressly made confidential by law and by this Ordinance, the Board shall make all documents and records available to the public in accordance with the Maine Freedom of Access Act, 1 M.R.S.A. §401 et seq., for inspection and copying including but not limited to the following:

1. All applications or other forms and documents submitted in support of any permit application;
2. All correspondence, into or out of the Board, and any attachments thereto;
3. Written comments received from any source regarding any application for a permit or any hearings or proceedings held pursuant to Section 3 or 4 of this Ordinance;
4. The transcripts of hearings, if made, tape recordings of hearings, if made, and the official, approved minutes of all Board meetings; and
5. All orders, permits, approvals, or other determinations.

B. The Town of Jay shall provide facilities for the inspection of such documents, records, correspondence and other information during reasonable hours. Persons wishing to copy papers and documents shall arrange to do so with the Board.

C. Copies of documents may be made at the following costs, as may reasonably be adjusted from time to time:

1. Copies shall be 50 cents per page;

Payment shall be made to the Town of Jay by cash, check or money order and shall be paid prior to the release of copies by the Board.

D. Except as expressly authorized by the Board, all Board files shall remain in the Jay Town Office.

First, Sec. 24. Tenth, Sec. 11 and 12. Eleventh, Sec. 7.

§3-104 CONFIDENTIALITY

The Board shall keep confidential those documents which may remain confidential pursuant to the Maine Freedom of Access Law 1 M.R.S.A. Section 401 et seq. The Board shall also keep confidential information demonstrated by the person submitting it to be a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of that person and would make available information not otherwise publicly available. The Board shall make determinations of confidentiality and any person aggrieved by such determination may appeal to court in accordance with state law. The Board shall withhold disclosure of such information pending a final judicial determination on any claim of confidentiality.

First, Sec. 25.

§3-105 BOARD DECISIONS

A. Acceptable for Processing. Except as provided in Chapter 5, Section 5-402(B), the Board shall, within 45 days of receipt of an application, notify the applicant in writing either that the application is acceptable for processing or, if the application is not acceptable for processing, the specific additional information needed to make an acceptable application.

B. Requests for Further Information. The fact that an application is deemed acceptable for processing does not prohibit the Board from requesting further information and data deemed necessary to evaluate the permit application. At any time during the review of an application for a permit, the Board or staff may request any additional information that is reasonably necessary to make any finding or determinations required by this Ordinance or any other provision of law.

C. Public Hearing. Except as provided in Chapter 5, Section 5-402, within 75 days after an application has been determined acceptable for processing, the Board shall notify the applicant in writing of the date, time and location of a public hearing, if the Board decides to hold one. The Board shall also provide public notice of the public hearing in a manner designed to inform interested and potentially interested persons.

If the Board decides to hold a public hearing, the hearing shall take place within 140 days of the date the Board mails written notice to the applicant that a permit application is acceptable for processing. All hearings shall be held and additional notice given in accordance with Section 3-107.

D. Board Action. Except as provided in Chapter 5, Section 5-403, within 45 days of the close of the public hearing, or any continuance hearing thereto, on a permit application, or within 120 days of acceptance of the application if no hearing is held, or within such other time limits as the Board may establish by order, either with the applicant's consent or for good cause after giving the applicant notice and an opportunity to be heard, the Board shall take any of the following actions:

1. Approve the application, without conditions other than the standard conditions specified in Section 3-110 and the standard conditions specified in Section 5-502, Section 9-404, Section 12-302 or Section 13-302, as applicable, and as approved by the Board, and set forth in writing its findings that the applicant has met each of the criteria of the appropriate chapter of this Ordinance;

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2. Approve the application, subject to the standard conditions in Section 3-112 and the standard conditions specified in Section 5-502, Section 9-404, Section 12-302, or Section 13-302, as applicable, and as approved by the Board, and subject to any other additional conditions necessary for the applicant to satisfy the requirements of this Ordinance, and set forth in writing its findings and the reasons for the imposition of these conditions;

3. Deny the application and set forth, in writing, its findings and reasons for its denial. The Board may deny an application for failure of the applicant to comply with the informational requirements of this Ordinance or if the information supplied is untrue or misleading.

Should the Board be evenly divided as to whether to approve or deny an application, such a vote shall have the effect of denying the application for failure to receive a majority in support.

E. Written Decisions. Every decision of the Board on an application shall be in writing and shall include findings of fact, conclusions of law, a plain statement of the appropriate rights of administrative and judicial review, and the time within which those rights must be exercised.

F. Projects Requiring More Than One Application. If an applicant applies to the Board for more than one application at any one time, the deadlines specified in this section for Board review and decisions on applications may be extended by the Board for reasonable cause for a reasonable period. The Board shall provide written notice to the applicant, intervenor(s) and the public of any such extension.

First, Sec. 26, 27 and 28. Fifth, Sec. 6. Eleventh, Sec. 8. Thirteenth, Sec. 17.

§3-106 ACTION PRIOR TO HEARING OR FINAL DECISION

The following procedures may apply to any application pending before the Board.

A. Procedure and Scheduling Orders. In its discretion, the Board may issue scheduling orders governing all proceedings occurring between acceptance of the application for processing and decision by the Board. Such orders may but need not necessarily include provisions directing or authorizing:

1. presentation of evidence or argument by the applicant or by members of the public;
2. opportunities for the Board or staff to seek or provide amplification or clarification of any matter under consideration by the Board;
3. particular methods or formats for the submission of information such as pre-filed testimony or affidavit;
4. procedures for participation by members of the public that have a direct and substantial interest which may be affected by the proceedings including but not limited to adequate notice of the hearing or related Board deliberations, opportunities for discovery, and manner of presentation of evidence; and
5. such other mechanisms as may in the discretion of the Board facilitate orderly consideration of the issues presented during consideration of the application.

Thirteenth, Sec. 18. Seventeenth, Sec. 26.

§3-107 PUBLIC HEARINGS

The following procedures shall apply to all public hearings held by the Board except enforcement hearings or proceedings which are governed by Chapter 4B.

A. Requirement for Notice. Unless otherwise specified in this Ordinance, prior to any hearing conducted by the Board the Board shall provide notice as follows:

1. To the applicant at least 10 days prior to the hearing date by certified mail, return receipt requested;
2. At least 10 days prior to the hearing by regular mail to persons who have filed a written request to be notified of hearings;
3. At least 10 days prior to the hearing to persons who have made timely requests to be notified of a specific hearing;
4. By publication twice in a newspaper of general circulation in the Town of Jay. The date of the first publication shall be at least 14 but no more than 21 days prior to the date of the hearing and the second publication shall be at least 7 but no more than 10 days prior to the date of the hearing; and
5. The Board may, by scheduling order, provide for additional notice.

For purposes of this Section, all notices shall be deemed to be delivered when deposited, postage prepaid, in the United States mail.

B. Contents of Notice. Notice of hearings shall contain the following minimum information:

1. Reference to the Ordinance authority under which the Board is acting;
2. The purpose of the hearing;
3. Time, date, and place of hearing;
4. The manner in which views may be submitted for consideration;
5. The place and time where relevant material may be examined prior to the hearing; and
6. The name, address and telephone number of the town official to contact for information.

C. Amendment of Applications after Public Notice of Hearings Has Been Given. After the first public notice of hearing, no amendment of any application shall be permitted except by order of the Board on motion of the applicant for good cause shown.

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1. In its discretion, the Board may reschedule the public hearing, conduct the public hearing as originally scheduled, or conduct the hearing as originally scheduled and direct or authorize other appropriate steps to assure that the public's opportunity to comment on the application as amended is preserved.
2. Following the determination of the Board pursuant to subsection 1, the applicant shall place a public notice in the same newspaper in which the original public notice appeared stating:
 - a. That the application has been changed, and the nature of the change; and
 - b. The information provided in the original notice pursuant to subsections B(3), (4), (5) and (6), amended as necessary.

D. Presiding Officer

1. The presiding officer at all hearings shall be either (a) the Chairman of the Board, if present and willing to preside, or (b) a member of the Board selected by those members present at the hearing.
2. The presiding officer shall have the authority to:
 - a. Administer oaths;
 - b. Regulate the course of the hearing;
 - c. Rule upon issues of procedure;
 - d. Rule upon issues of evidence;
 - e. Hold conferences before or during the hearing for settlement or simplification of issues or procedure;
 - f. Regulate the placement of television cameras, still cameras, motion picture cameras or microphones at Board hearings in order that the use of such equipment does not interfere with the orderly conduct of the hearing;
 - g. In special cases, where good cause appears, permit deviation from the procedural rules insofar as compliance therewith is found to be impractical or unnecessary; and
 - h. Take such other action as may be necessary for the efficient and orderly conduct of the hearing, consistent with this Ordinance and applicable statutes.
3. The presiding officer may be overruled by a majority vote of the Board members present on any decision or ruling relating to a hearing.

E. General Conduct

- 1. Opening statement.** The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

2. Transcription of Testimony. All testimony at hearings before the Board may be recorded and, as necessary, transcribed. The tape recordings and transcript of testimony, if made, shall constitute part of the hearing record.

3. Witnesses. Witnesses shall be sworn. Witnesses shall be required to state for the record their names, residence, business or professional affiliation, and whether or not they represent another individual, firm, association, organization, government agency or other legal entity, for purposes of the hearing. Witnesses may be compelled to attend, testify and produce records if subpoenaed by the Board in accordance with the provisions of this Ordinance.

4. Testimony in Written Form. At any time prior to or during the course of a hearing, the presiding officer may require that all or part of the testimony to be offered at such hearing be submitted in written form at such time and in such form as may be specified.

All persons offering testimony in written form shall be subject to questioning. This subsection shall not be construed to prevent oral testimony at a scheduled hearing by any member of the public who requests and is granted time to testify at a hearing.

5. Submission of Proposed Findings and Conditions. All persons participating in any hearings shall have the right to submit to the Board in writing proposed findings of fact, briefs, and recommend conditions, providing that such documents shall be submitted in writing not later than seven (7) days after the close of the hearing or within such other time as ordered by the presiding officer or the Board. This subsection shall not apply to Board staff, consultants and counsel, all of whom shall have the right to submit such proposals at any time.

6. Continuance. All hearings conducted pursuant to this section may be continued for reasonable cause and reconvened from time to time and from place to place by the Board or presiding officer, as circumstances require. All orders for continuance shall specify the time and place at which such hearings shall be reconvened. The Board or presiding officer shall provide reasonable notice to any person at the hearing who so requests in writing and to the public of the time and place of such a reconvened hearing.

F. Public Participation

1. Members of the Public. Any person including any person deemed by the Board to have a direct and substantial interest in the proceeding, may participate in a public hearing by making oral or written statements of such person's position on the issues, by introducing evidence and by submitting written or oral questions through the presiding officer, with such limits and on such terms and conditions as may be fixed by the Board or presiding officer.

2. State, Federal and Municipal Agencies. The presiding officer shall afford a representative of any interested federal, state, municipal or other governmental agency a reasonable opportunity to participate in such hearing and introduce evidence and question witnesses. Such representatives shall be permitted such rights as are granted by this section only if representing the views and position of the agency on whose behalf that representative appears and not personal views and opinions.

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G. Oral Testimony. The following procedures shall apply in those hearings in which oral testimony is to be received by the Board:

1. The order of witnesses shall be determined by the presiding officer with due regard to the time available, the number of witnesses to be heard, considerations of fairness and efficiency including redundancy, and matters of time and distance with respect to witnesses having travel constraints. Absent such considerations, the applicant should generally be permitted to present its witnesses before any other witnesses testify and in such order as the applicant considers most effective.
2. Board members, staff, counsel and consultants may be permitted by the presiding officer to ask questions of any witness at any time.
3. The applicant's representatives shall be given a reasonable opportunity, subject to the presiding officer's discretionary authority to schedule the Board's business, to question witnesses directly.
4. The Board may designate times during the hearing when representatives of federal, state or other governmental agencies, persons deemed to have a direct and substantial interest or members of the public may offer testimony and make statements, and may set time limits on such questions or statements.

First, Sec. 29 and 30. Tenth, Sec. 13. Thirteenth, Sec. 19. Seventeenth, Sec. 27.

§3-108 GENERAL EVIDENCE

A. Admissibility. Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded. The Board's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted to the Board.

B. Official Notice. The Board may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters within its specialized knowledge and of statutes, regulations and nonconfidential Board records. Facts officially noticed shall be included and indicated as such in the record.

C. Official Record. An official record or lack thereof may be evidenced in the manner provided in Rule 44 of the Maine Rules of Civil Procedure.

D. Objections. All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated during the course of the hearing. If during the course of, or after the close of, the hearing and during its deliberations the Board determines that the ruling of the presiding officer was in error, it may reopen the hearing or take such action as it deems appropriate to correct such error.

E. Offer of Proof. An offer of proof may be made in connection with an objection to a ruling of the presiding officer excluding or rejecting any testimony or question on cross-examination. Such

offer of proof shall consist of a statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness.

Seventeenth, Sec. 28.

§3-109 DOCUMENTARY AND REAL EVIDENCE

A. Exhibits and Evidence. All documents, materials and objects offered in evidence as exhibits, shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. The presiding officer may require, after prior oral or written reasonable notice, that any person offering any documentary or photographic evidence shall provide the Board with a specified number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably suitable for reproduction.

B. Availability. All written testimony and documents, materials and objects admitted into evidence shall be made available during the course of the hearing for public examination. All such evidence will be available for public examination at the Town Office during normal business hours.

C. Record of Application. In any proceeding involving an application, the application filed with the Board, including exhibits and amendments thereto, shall be placed into evidence.

Thirteenth, Sec. 20. Seventeenth, Sec. 29.

§3-110 THE RECORD AND BURDEN OF PROOF

A. The record upon which any Board decision is to be made shall consist of the application, proposed findings of fact and conclusions, all documentary and real evidence properly submitted and received by the Board, all testimonial evidence whether pre-filed or delivered in person which has been admitted by the Board and, if prepared, the recording or transcript of the proceedings. The record shall remain open for other evidence or testimony for ten (10) days following the close of any public hearing unless otherwise provided by the Board, and if no public hearing is held, then according to Board scheduling order. Once the record has been formally closed, no further evidence of any kind may be placed in the record except by order of the Board and after appropriate notice is given.

B. An applicant for a new, renewed, modified or transferred permit shall have the burden of proof on all matters unless otherwise expressly provided by law or by this Ordinance. It shall be the applicant's burden to present sufficient admissible evidence to enable the Board to make each and every affirmative finding necessary under the Ordinance to enable the Board to take the action being sought by the applicant.

Thirteenth, Sec. 26.

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§3-111 PROPOSED FINDINGS AND CONDITIONS

- A. By procedural order, the Board shall establish a date by which the applicant and any other person may submit in writing proposed findings of fact and recommended conditions supported by written explanation and argument but not by new evidence. If any person other than the applicant makes any submission, that person shall deliver a copy to the applicant.
- B. By procedural order, the Board shall establish a date by which the Board's staff, consultants and counsel shall file with the Board and serve upon the applicant a draft permit or proposed findings of fact and recommended conditions.
- C. By procedural order, the Board shall establish a reasonable opportunity for the applicant to submit comment or argument concerning any draft permit or proposed findings and conditions submitted by any person or the Board staff.
- D. The Board's deliberations with respect to any and all such draft permits or proposed findings and conditions shall be conducted in a meeting open to the public provided, however, that neither the applicant nor members of the public shall have any right to participate in the deliberation except as may be specifically permitted by the presiding officer.

Thirteenth, Sec. 28.

§3-112 PERMIT CONDITIONS

The Board may impose any appropriate and reasonable conditions in any permit issued under this Ordinance in order to ensure compliance with the provisions of this Ordinance. In addition, and except as otherwise provided, every permit shall be subject to the following standard conditions:

- A. Inspection.** Employees and authorized representatives of the Board or the Town of Jay shall be allowed access to the facility which is the subject of a permit issued pursuant to this Ordinance during normal business or operating hours, and at such other times as the Board deems necessary, to inspect such facility, to examine records, to sample or monitor any substances or parameters at any location to assure compliance with this Ordinance and the terms of any permit issued pursuant to it.
- B. Modification.** A new or modified permit shall be required prior to the change or modification of any activity regulated by permit under this Ordinance.
- C. Compliance with Standards.** All applicable standards in State laws and regulations, Federal laws and regulations and this Ordinance shall be complied with.
- D. Record Keeping.**
 - 1. The permit holder shall maintain sufficient records to complete the application for any permit under this Ordinance and to record equipment malfunctions, failures, and downtime as well as any change or malfunction that would create above normal pollutant or contaminant emissions or solid waste disposal.

2. The permit holder shall for a period of six (6) years from the date of the sample, measurement or report, retain records of all monitoring information, including all calibration and maintenance records and all original recordings from continuous monitoring instrumentation, copies of all reports required by permit, and records of all data used to complete the application for a permit whether or not developed by the permit holder or an agent thereof.

3. Record keeping information shall be accessible at the permit holder's facility or otherwise readily available upon request of the Board.

E. Time Limit for Construction. Unless a chapter of this Ordinance provides otherwise, approval to conduct any activity subject to permit shall become invalid if such activity is not commenced within 18 months after receipt of such approval or if such activity is discontinued for a period of 18 months or more. The Board may extend such time period upon a satisfactory showing that an extension is justified.

F. Monitoring. The holders of all permits except for Jay Subdivision Permits shall be subject to the following monitoring conditions:

1. The Board shall be allowed to install equipment of its own at the facility which is the subject of a permit in order to monitor those activities which are the subject of the permit.

2. The permit holder shall monitor the activity regulated by permit under this Ordinance according to test procedures approved by this Ordinance and applicable federal and state law or regulations, unless other test procedures have been specified in the permit. Samples and measurements taken for the purpose of monitoring shall be representative of the volume and nature of the regulated activity over the sampling and reporting period.

3. Monitoring records shall include information on:

- a. The date, exact place, and time of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

G. Reporting. The holders of all permits except for Jay Subdivision Permits shall submit the following reports in addition to any reports specifically required by any permit:

1. Quarterly Reports. Unless otherwise specifically superseded by a permit condition, Quarterly reports shall be submitted to the Board by the end of the succeeding month following the end of each quarter:

First Quarter Jan.-Mar. Report Due April 30

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Second Quarter	Apr.-Jun. Report Due July 31
Third Quarter	Jul.-Sep. Report Due October 31
Fourth Quarter	Oct.-Dec. Report Due January 31

Quarterly Reports shall contain:

- a. the results of all monitoring of emissions and discharges required by a permit during the previous quarter;
- b. description and quantification of all unpermitted or excessive emissions or discharges not in compliance with a permit including all non-compliance notifications made to the Town during that quarter;
- c. description of any occurrences of any other kind which did or may have constituted noncompliance with any permit conditions during that quarter;
- d. detailed analysis of the causes of all emissions, discharges and occurrences identified in response to subparagraphs b and c above and detailed description of all steps taken or planned to be taken to reduce or prevent emissions, discharges and occurrences reported in subparagraphs b and c above;
- e. results and analysis of any stack testing or other testing of emissions and discharges regulated by a permit during that quarter;
- f. compliance assurance reports and compliance certification as required by Chapter 13, Part 8.

2. Annual Reports. For each calendar year, a report shall be submitted to the Board by January 31 of the next year containing the following information:

- a. Summary description of all studies, reports, projects, programs or other measures employed to meet permit requirements and year-long trends in emissions and discharges regulated by the permit; and
- b. Copies of all Air Emission Statements, Toxic Use Reduction reports and Toxic Chemical Release Inventory reports as they are filed with relevant state and federal agencies during the year.

3. Additional Samples.

- a. The permit holder shall analyze any additional samples as may be reasonably required by the Board to ensure quality control of the samples necessary for meeting permit conditions.
- b. If the permit holder monitors any discharge or emission characteristics set forth in the permit more frequently than required, the results of such monitoring shall be included in the quarterly reports.

4. On an individual or case-by-case basis, for good cause, the Board may order alternate or additional reporting requirements.

5. Reports of Federal or State Violations. Every permit holder shall report to the Board in writing, within ten (10) days of receipt, any citations or notices of violation of federal or state environmental permits, approvals or licenses, including renewals, modifications or extensions thereto.

6. Short-term Noncompliance Reporting. For all Jay Air Emission Permit holders and Water Permit holders, short-term noncompliance reporting shall be in accordance with the procedures set forth in Chapter 12, Section 12-204 and Chapter 13, Section 13-205. In the event any other permit holder is unable to comply with any of the conditions of this Ordinance, the permit holder shall immediately notify the Board or the Code Enforcement Officer by telephone with the following information and follow-up in writing within 48 hours after commencement of such non-compliance:

- a. Description and quantification of the noncompliance and its cause;
- b. Period of noncompliance, including exact date and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance.

All permit holders shall notify the Board or the Code Enforcement Officer by telephone in the case of an emergency or in advance of any planned changes in activity which may result in noncompliance with the terms and conditions of any permit issued pursuant to this Ordinance.

Notwithstanding any requirement of this subsection, the noncompliance reporting provisions specifically set forth in the permit shall control.

H. Assignment or Transfer of Permits. Every permit issued by the Board is nontransferable unless written consent is obtained from the Board. Except as provided in Section 9-503(B), written consent must be applied for no later than two (2) weeks subsequent to any transfer or assignment of property which is subject to a permit. Any proposed transferee or assignee shall demonstrate to the satisfaction of the Board its technical and financial capacity and intent to: (1) comply with all conditions of the applicable permit; and (2) to satisfy all applicable criteria of this Ordinance. The permit holder and proposed transferee or assignee shall be jointly and severally liable for violation of this subsection.

I. Signatory Requirement. All applications, petitions, reports and other papers submitted to the Board shall be signed by the party, or its duly authorized officer or agent, and shall include the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate and complete. I authorize the Board and Code Enforcement Officer to enter the property that is the subject of this document, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein. I am aware there are significant penalties for submitting false

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information, including the possibility of fine and imprisonment. I also certify that I am duly authorized by the Applicant to execute this document and that the document is a valid and binding document of the Applicant.”

Upon becoming aware that he or she submitted incorrect information or failed to submit relevant facts, the responsible officer or employee must provide the Board with supplementary facts or corrected information.

First, Sec. 31 and 32. Tenth, Sec. 14. Eleventh, Sec. 9. (formerly §3-110) Thirteenth, Sec. 21, 22, 23, 24, and 25. Fourteenth, Sec. 8 and 9. Seventeenth, Sec. 30 and 31. Eighteenth, Sec. 6, 7 and 8. Twenty-Second, Sec. 7, Twenty-Third, Sec.6.

§3-113 APPEALS

Any person aggrieved by a final decision of the Board on a permit application or a petition to amend or modify a Jay permit may seek judicial review thereof in accordance with Subsection B. A decision of the Board to grant or deny a permit application or a petition to amend or modify a Jay permit shall not be considered final for purposes of this section until the Board has taken final action on a petition for reconsideration under subsection A.

A. Petition for Reconsideration. Within (30) days of receipt of notice of the decision of the Board on a permit application or a petition to amend or modify a Jay permit, an applicant, permit holder, or any person aggrieved by the decision may petition the Board in writing for reconsideration of the decision. A Board member who voted on the prevailing side of the decision may move to reconsider at any time within such 30 day period.

The petition shall identify the findings, conclusions or conditions objected to or believed to be in error, the basis of the objections or challenge, the nature of the relief requested and the nature of any new or additional evidence to be offered. Filing a petition for reconsideration is a prerequisite to filing a request for judicial review pursuant to subsection B of this section. Any person aggrieved must properly raise all issues in the petition for reconsideration. Any issues not so raised are deemed waived. Any person aggrieved by a final decision of the Board may only petition the Board for reconsideration of the decision once.

The Board shall, within 30 days of receipt of such a petition, commence its review of such petition and determine whether or not to hold a public hearing. Any public hearing shall be held within 60 days of receipt of the petition in accordance with the procedures specified in Section 3-107. Within 90 days of receipt of the petition, the Board shall approve, approve with conditions or deny the petition in full or in part. Should the Board be evenly divided as to whether to approve or deny the petition, such a vote shall have the effect of denying the application. The Board shall promptly provide written notice of its decision on reconsideration to the person who petitioned for reconsideration, to the applicant and all other parties, and shall promptly publish its decision in a newspaper of general circulation in the Town of Jay. The Board's decision on a petition for reconsideration shall constitute its final decision.

In accordance with Subsection B, the petitioner shall have 30 days from receipt of notice of the Board's decision on reconsideration to appeal to Court the Board's final decision on the petition for reconsideration.

B. Judicial Appeal. Any person aggrieved by a final decision of the Board may seek judicial review in accordance with state law within 30 days from receipt of the notice of decision.

First, Sec. 33 and 34. Tenth, Sec. 15. (formerly §3-111) Thirteenth, Sec. 27. Fourteenth, Sec. 10.

§3-114 ADVISORY RULINGS

The Board may, in its sole discretion, issue advisory rulings at the request of any applicant, permit holder, Code Enforcement Officer or upon its own motion, concerning the applicability of this Ordinance to any activity or clarifying, but not modifying or amending, any permit issued under this Ordinance.

Requests for advisory rulings shall be submitted to the Board in writing. The Board may, in its sole discretion, conduct a hearing and may, in its sole discretion, issue an advisory ruling to the person requesting such ruling or reject such person's application for an advisory ruling within 120 days of the Board's receipt of such request.

An advisory ruling shall not be binding on the Board provided that, in any subsequent enforcement proceeding initiated by the Board, any person's justifiable reliance upon the ruling shall be considered in mitigation of any penalty sought to be assessed.

Thirteenth Sec. 29. Seventeenth, Sec. 32.

§3-115 ENVIRONMENTAL RESERVE FUND AND FEES

A. Environmental Reserve Fund

The Environmental Reserve Fund is hereby established. The purpose of the Environmental Reserve Fund is to promote all the purposes, policies and objectives of this Ordinance as expressed therein. All fees required to be paid to the Town of Jay for Permits issued pursuant to this Ordinance, and all other sums of money paid to or given to the Town of Jay pursuant to this Ordinance including, without limitation, all fines and penalties shall be credited to the Environmental Reserve Fund and only the expenditures authorized by this Ordinance shall be charged to the Environmental Reserve Fund.

Money in the Environmental Reserve Fund shall be deposited, invested and administered by the Selectmen and the Treasurer of the Town of Jay and may be invested as provided by Maine law. Interest on the investments shall be credited to the Environmental Reserve Fund.

The Selectmen may receive, apply for, or accept, on behalf of the Town, funds, grants, bequeaths, gifts or contributions from any Person. All such funds shall be deposited in the Environmental Reserve Fund.

The Selectmen shall be the trustees of the Environmental Reserve Fund and the Environmental Reserve Fund, unless otherwise provided in this Ordinance, shall be subject to 30-A M.R.S.A. §5802, as amended from time to time.

If on June 30 of any year, the Net Balance in the Environmental Reserve Fund is equal to or greater than \$800,000, then the Annual Fees for the next year shall not be due and payable. After a one

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year suspension of the Annual Fees, the Annual Fees shall then become due and payable the next year. This paragraph shall be invoked in any year when the criterion herein established has been met. The Net Balance in the Environmental Reserve Fund shall be calculated by subtracting from the total amount of money in the Environmental Reserve Fund all the sums that are then due and payable or those actual expenses that have been incurred.

B. Annual Fees

Permit Holders of a Jay Air Emissions Permit, a Jay Water Permit, or a Jay Solid Waste Facility Permit (including a Schedule of Compliance as amended from time to time) shall pay to the Town of Jay an Annual Fee as follows:

1. Jay Air Emissions Permit

The Annual Fee for a Jay Air Emissions Permit shall be the sum of the applicable Base Fee Per Year and the Per Ton Fee Per Year of all permitted air pollutants as follows:

Annual permitted emissions in tons	Base Fee Per Year
1-1,000	\$15,000
1,001-4,000	25,000
over 4,001	35,000

The Per Ton Fee Per Year for all permitted air pollutants shall be \$4.00 per ton.

The permitted air pollutants include, but are not limited to: PM, SO₂, NO_x, CO, VOC, H₂SO₄, lead, and TRS.

2. Jay Water Permit

The Annual Fee for Jay Water Permit shall be the sum of the Base Fee and the Fee per million gallons per day (“MGD”) of permitted flow as follows:

Base Fee: \$5,000.00

Fee for MGD: \$400.00 times the permitted flow in MGD

The first million gallons per day of permitted flow is exempt from the Annual Fee

3. Jay Solid Waste Facility Permit (including Schedule of Compliance as amended from time to time)

The Annual Fee for Jay Solid Waste Facility Permit (including Schedule of Compliance as amended from time to time) shall be \$35,000.00.

These Annual Fees have been based upon the Town's best estimate of the actual costs necessary for the Town to administer and enforce this Ordinance. All Annual Fees shall be credited to the Environmental Reserve Fund. The Annual Fees shall be due and payable to the Town of Jay on January 3, 2001 and each year thereafter on the same day; provided however, if the 3rd falls on a Saturday or Sunday, then the payment is due on the next Monday.

By December 1 of each year, the Code Enforcement Officer shall bill each Permit Holder the amount due for its Annual Fee. Failure to pay the Annual Fee shall be deemed a violation of this Ordinance and a Violation of the Permit.

Failure to pay any Annual Fee as provided in this Ordinance is sufficient grounds for revocation of a Permit. There are no additional fees assessed for renewals or amendments. Any Schedule of Compliance entered into on or after January 3, 2001 shall provide for an Annual Fee.

C. Expenditures

The Selectmen may authorize expenditures from the Environmental Reserve Fund. Such expenditures shall be all expenditures for the implementation, administration and enforcement of this Ordinance. Such allowable expenditures may include, but not be limited to, personnel or payroll expenses and benefits, including but not limited to, Code Enforcement Officer, Deputy Code Enforcement Officer, clerks and other staff, expenses relating to Planning Board including payroll, expenses relating to any pre-permit activities such as application reviews, public hearings and appeals, the actual Permit processing activities and associated post-permit compliance activities required to assure continued Permit compliance, expenses relating to telephone, training, travel, supplies, monitoring, sampling and computer supplies and services, expenses related to enforcement activities as a result of Permit noncompliance, expenses related to the retention of lawyers or legal services, the retention or contracts with consultants including engineers, scientists, and inspectors, reasonable capital expenditures for specific equipment to carry out the objectives of this Ordinance, or any other expenditure for costs which are related to carrying out the objectives of this Ordinance.

D. Application Fee and Filing Fee

The following Application Fee and Filing Fee shall be assessed against all applicants for a Permit with the exception of a Permit Holder who has a Jay Air Emissions Permit, a Jay Water Permit, or a Jay Solid Waste Facility Permit (including Schedule of Compliance as amended from time to time) and with the exception of those seeking a Jay Subdivision Permit governed by Chapter 5:

1. **Filing Fee.** A Filing Fee of One Thousand Dollars (\$1,000.00) shall be paid at the time a Permit application is filed. Failure to pay the required fee at the time of filing will result in the application being returned to the applicant.
2. **Application Fee.** Fees for direct costs including, but not limited to, legal, engineering and other professional fees and other costs specifically accountable to a Permit as follows:
 - (a) An Application Fee for all direct costs incurred in reviewing Permit application and other submittals relating to a Permit; and

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- (b) All costs relating to the preparation of information and materials for the Board associated with the Permit application.
3. **Fee Processing.** The Board shall bill the applicant monthly for any Application Fee. The applicant shall pay the bills to the designated recipient within 30 days. If any applicant withdraws its application, the applicant remains liable for all direct costs incurred to the date of withdrawal. Upon failure to pay the Application Fee when due, the Board and the Code Enforcement Officer may cease its activity regarding the application, may take enforcement action pursuant to Chapter 4B to recover the Application Fee and may take appropriate enforcement action pursuant to Chapter 4B. Final payment of the Application Fee shall occur before issuance of the Permit.
4. **Fee Administration.** The Code Enforcement Officer shall be responsible for fee administration and shall review bills submitted by vendors prior to directing bills to an applicant. Any applicant may request that the Code Enforcement Officer establish an estimated non-binding budget for any Permit application. If the Code Enforcement Officer establishes such a budget, and if it appears that the budget will be exceeded, the Code Enforcement Officer shall notify the applicant with that information and shall provide an opportunity to discuss a revised budget.

First, Sec. 35. Sixth, Sec. 10. Eleventh, Sec. 10. (formerly §3-113) Thirteenth, Sec. 30. Seventeenth, Sec. 33. Eighteenth, Sec. 9. Twentieth, Sec. 9. Twenty-First, Sec. 7, Twenty-Third, Sec. 7.

§3-116 FORMS

All applications, motions, proposed findings, documents, petitions, briefs, complaints, responses to complaints and, to the extent practicable, written testimony filed with the Board, (all hereinafter referred to as “form”), except for documents not susceptible of reproduction in the manner provided or for other good cause shown, shall be typewritten or printed on white opaque paper 8 1/2 by 11 inches in size and bound; typed matter shall be double spaced. The first page of each such form shall be headed by the title:

State of Maine
Town of Jay Planning Board

and shall have a caption with (1) the title of the matter, giving the name of the applicant, the activity in issue and the location (e.g., In the Matter of ABC Inc., Jay, Maine); (2) the Board's application number (e.g., Jay Water Permit Application #86); and (3) the title of the form (e.g., Petition to Intervene).

The final page of the form shall be dated and signed by the applicant, permit holder, respondent or his attorney or representative. Such signature shall constitute a certification by such person that he has personally examined and is familiar with the form, that based on his inquiry of those persons immediately responsible for obtaining information on the form, and to the best of his knowledge and information he believes the information is true, accurate and complete, and that it is not interposed for delay. If a form is not signed or is signed with intent to defeat this section, it may be stricken as false and the action may proceed as though the form had not been served and filed.

First, Sec. 36. Tenth, Sec. 16. (formerly §3-114) Thirteenth, Sec. 31.

§3-117 SERVICE AND FILING OF DOCUMENTS

A. Service. A copy of every application, motion, petition, brief, or paper relating to discovery and other document permitted or required to be filed with the Board pursuant to this Ordinance shall be mailed to all parties in the proceeding or their representatives by ordinary mail unless otherwise provided in this Ordinance.

Any notice required to be given or document filed or served under this Ordinance shall be deemed delivered when deposited in the United States mail, postage prepaid except as otherwise specified.

B. Filing. An original and four (4) copies of all such applications, motions, petitions, briefs, complaints, responses to complaints, plans, study proposals, reports and other required submissions shall be filed with the Board by delivery to the Town Office, 340 Main Street, Jay, Maine, 04239 by 4:00 p.m. local time on or before the day the submission is due unless otherwise specified in a Board order. The Board may order additional copies of particular documents to be filed.

C. Representatives. The first document filed by any person in a proceeding shall designate the name and address of a person on whom service may be made and to whom all correspondence from the Board and staff may be sent.

D. Service of Papers by the Board. For purposes of this Ordinance, the Board shall assure that all orders, decisions, notices and other papers issued by the Board are served within seven (7) days of issuance upon all parties to the proceeding by ordinary mail, hand delivery or by private express courier except for subpoenas or unless otherwise provided by this Ordinance, and provided that a Board decision on an application pursuant to Section 3-105(D) and on a petition for reconsideration pursuant to Section 3-113(A) shall be served upon the applicant and intervenors by certified mail, return receipt requested, by hand delivery or by private express courier.

E. Facsimile and Electronic Mail Not Accepted. The Board shall not accept facsimile or electronic mail as a substitute for filing of an original document. The Board will accept facsimile for 48 hour or less incident reports.

Eighth, Sec. 2. Tenth, Sec. 17. (formerly §3-115) Thirteenth, Sec. 32. Seventeenth, Sec. 34 and 35, Twenty-Third, Sec. 8.

§3-118 COMPUTATION AND ENLARGEMENT OF TIME

In computing any period of time provided by this Ordinance, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

When, by this Ordinance or by order of the Board, an act is required to be done at or within a specified time, the Board may within its discretion at any time order the period enlarged for a reasonable period for good cause shown.

(formerly §3-116) Thirteenth, Sec. 33.

CHAPTER 3

§3-119 ORDERS AND DECISIONS EFFECTIVE

Orders, decisions, notices and other papers issued by the Board shall be effective upon the presiding officer, or other duly authorized Board member, signing the written order, decision, notice or paper issued by the Board.

Tenth, Sec. 18. (formerly §3-117) Thirteenth, Sec. 34.

§3-120 REVOCATION, MODIFICATION OR SUSPENSION OF PERMITS

Any person, including the Code Enforcement Officer, may petition the Board to revoke, modify or suspend a permit. The petition must be addressed to the Board and must state which of the criteria listed below is being invoked. It must specifically describe the factual basis for the petition and generally describe and summarize what evidence will be offered to support the petition. The petition, once filed, may be supplemented only as permitted by the Board. The petitioner must serve a copy of the petition on the permit holder at the time the petition is filed with the Board.

No later than 30 days following the filing of a petition to revoke, modify or suspend, and after providing the petitioner and the permit holder opportunity to comment, the Board shall issue an order specifying the schedule and procedure for Board consideration of the petition. The Board shall utilize the administrative procedures set forth in this Chapter as appropriate. If the Board determines that a petition on its face does not warrant further consideration, the Board may dismiss it. After a hearing, the Board may deny the petition or modify in whole or in part any permit, issue an order prescribing necessary corrective action, or revoke or suspend a permit when the Board finds that:

- A. The permit holder has violated any condition of the permit, Board order or this Ordinance;
- B. The permit holder has obtained a permit by misrepresenting or failing to disclose fully all relevant facts;
- C. The permitted activity poses a threat to human health or the environment;
- D. The permit fails to include any standard or limitation legally required on the date of issuance;
- E. Modification or amendment of a permit is necessary to ensure compliance with applicable standards, limits or requirements; or
- F. There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the permit.

Seventeenth, Sec. 36. Eighteenth, Sec. 10 and 11.

CHAPTER 4A

Chapter 4, as enacted on May 21, 1988 and as amended by First, Sixth, Eighth, Tenth, and Eleventh Ordinances, repealed and replaced by Thirteenth Ordinance, Sec. 35.

PERMIT ADMINISTRATION AND INVESTIGATIONS

Section

§4A-101 Permit Administration

§4A-102 Investigations

§4A-103 Emergencies

§4A-101 PERMIT ADMINISTRATION

A. General. The Code Enforcement Officer shall generally oversee the administration of all permits issued by the Board.

B. Compliance Facilitation. Whenever it appears to the Code Enforcement Officer that there is or may be any irregularity in the administration of, or compliance with, any permit issued by the Board, the Code Enforcement Officer may contact the permittee and may attempt to secure satisfactory permit administration and compliance. The Code Enforcement Officer is authorized, but not required, to meet at reasonable times and places with representatives of the permittee to discuss issues or problems relating to administration of, or compliance with, any permit. Notwithstanding any effort undertaken by the Code Enforcement Officer pursuant to this section, responsibility for compliance with the permittee's obligations under any permit remains with the permittee.

C. Compliance Order. Whenever the Code Enforcement Officer is informed and believes that any permittee is operating out of compliance with any permit issued by the Board, the Code Enforcement Officer may issue a compliance order directing the permittee to do or not to do whatever the Code Enforcement Officer reasonably believes to be necessary to assure compliance with a permit. On receipt of any compliance Order, the permittee shall within (3) days advise the Code Enforcement Officer in writing whether it acquiesces to the compliance order or whether it will seek review by the Board.

D. Board Review. Whenever a permittee applies for Board review of a compliance order, the Board shall at its next regularly scheduled meeting, except in the case of emergencies, conduct an informal hearing and the Board may either affirm, modify or revoke the compliance order on the basis of that hearing.

E. Report to Board. From time to time, the Code Enforcement Officer may brief the Board with respect to any issues of permit administration or compliance including any activities of the Code Enforcement Officer or any permittee under any subsection hereof.

F. Other Proceedings. The provisions of this section are supplemental to, and independent from, all other provisions of Chapter 4A and Chapter 4B. Nothing said or done by or on behalf of the Code

CHAPTER 4A

Enforcement Officer in implementation of this section shall preclude investigation or enforcement under other provisions of this Ordinance. Nothing said or done by any permit holder in response to any initiative by the Code Enforcement Officer under this section shall constitute an admission of non-compliance. Full compliance by a permit holder with the express terms of a compliance order is a defense in any enforcement proceeding but only to the extent that the enforcement complaint directly relates to the specific subject matter of the compliance order. In the penalty phase of any enforcement proceeding under Chapter 4B, evidence of the permit holder's conduct under this section may be offered as grounds for either mitigation or enhancement of any penalty otherwise applicable.

Fourteenth, Sec. 11. Seventeenth, Sec. 37.

§4A-102 INVESTIGATIONS

A. The Code Enforcement Officer may at any time conduct an investigation., On receipt of a written complaint signed by ten or more persons residing or conducting business in the Town of Jay, and alleging violation of this Ordinance or violation of any permit, approval or order of the Board, the allegations of the complaint shall be investigated by the Code Enforcement Officer.

B. In all cases not within the provisions of Section 4A-103, the investigation shall be conducted in a reasonably expeditious manner.

C. After an investigation under this section has been completed, the Code Enforcement Officer shall report to the Environmental Enforcement Counsel. The Environmental Enforcement Counsel may commence an enforcement proceeding in accordance with the provisions of Chapter 4B of this Ordinance. If the Environmental Enforcement Counsel determines that commencement of an enforcement proceeding is inappropriate or inadvisable, the Environmental Enforcement Counsel shall so report to the Board and the report of investigation conducted by the Code Enforcement Officer shall be placed on file and the matter shall be considered closed without prejudice.

Fourteenth, Sec. 12.

§4A-103 EMERGENCIES

Whenever it appears to the Board, or to the Code Enforcement Officer, that there is or may be an ongoing violation of any provision of this Ordinance or of the terms or conditions of any permit, approval or order of the Board which is creating or is likely to create a substantial and immediate danger to public health, welfare or safety or significant environmental harm, the Board or the Code Enforcement Officer may in accordance with this subsection order the person or persons causing or contributing to such hazard to take such immediate actions as are necessary to reduce or alleviate the danger. Service of a copy of the order issued under this emergency procedure shall be made by Sheriff, Deputy Sheriff, constable, or Jay Police Officer to the person to whom the order is directed. In the event such persons are so numerous that the specified method of service is a practical impossibility or the Board or Code Enforcement Officer cannot identify the person or persons causing or contributing to such hazard, the Board or Code Enforcement Officer, to the extent practicable, shall make the order known by publication of such order for a reasonable period in a newspaper of general circulation in the Town of Jay or shall publicize such order on radio or television for a reasonable period. Before issuing such order, the Board or Code Enforcement Officer may consult and coordinate with appropriate state agencies in responding to the emergency.

Each person to whom such order is directed shall comply with it immediately. Any such person may apply to the Board for a hearing on such order within 48 hours of receipt of the order. The hearing shall be held by the Board within five (5) days of service of the request for hearing. Such hearing shall be conducted in accordance with Section 4B-107 of this Ordinance to the extent possible under the circumstances, but to the extent that the circumstances require expedited action the presiding officer may apply such procedural rules as required by the circumstances and he shall clearly state such procedures at the start of the proceeding. Within seven (7) days after such hearing, the Board shall make findings of fact and continue, revoke or modify the order. The findings of fact and order shall be served as specified above in this subsection. The decision of the Board shall be considered final Board action which may be appealed in accordance with Section 4B-110. This subsection is additional to and independent of any and all other remedies that might otherwise be available at law or in equity.

CHAPTER 4B

Chapter 4, as enacted on May 21, 1988 and as amended by First, Sixth, Eighth, Tenth, and Eleventh Ordinances, repealed and replaced by Thirteenth Ordinance, Sec. 35.

ENFORCEMENT

Section

- §4B-101 Powers and Duties of Environmental Enforcement Counsel
- §4B-102 Commencement of Enforcement Proceedings
- §4B-103 Response to Complaint
- §4B-104 Default Order
- §4B-105 Board Decision
- §4B-106 Prehearing Conference
- §4B-107 Enforcement Hearings
- §4B-108 Enforcement Orders
- §4B-109 Penalties
- §4B-110 Judicial Review
- §4B-111 Stay
- §4B-112 Nuisance
- §4B-113 Judicial Enforcement

§4B-101 POWERS AND DUTIES OF ENVIRONMENTAL ENFORCEMENT COUNSEL

A. Appointment. The Environmental Enforcement Counsel shall be appointed by the Board of Selectmen.

B. Duties. The Environmental Enforcement Counsel shall investigate potential violations of the Ordinance referred by the Board or Code Enforcement Officer, report to the Board when appropriate and commence and maintain enforcement proceedings.

Seventeenth, Sec. 38 and 39.

CHAPTER 4B

§4B-102 COMMENCEMENT OF ENFORCEMENT PROCEEDINGS

A. Commencement of Proceedings. The Environmental Enforcement Counsel shall commence an enforcement proceeding by filing and serving a complaint upon the alleged violator (herein called “Respondent”).

B. Complaint: Form and Content. Each complaint for the assessment of a penalty and/or for the suspension, revocation or modification of a permit shall include:

1. A statement reciting the section(s) of the Ordinance authorizing the issuance of the complaint;
2. A specific reference to each provision of the Ordinance or any applicable permit which Respondent is alleged to have violated or to other legal grounds for the complaint;
3. A concise statement of the factual basis for the alleged violation;
4. Either a demand for specific penalties or forms of relief authorized by this Ordinance or a statement that the complaint seeks whatever outcome may be appropriate under the circumstances; and
5. Notice of Respondent's rights to (a) admit to the violation, consent to the penalty or other action specified in the complaint; or (b) admit to the violation, but request a hearing before the Board to contest the penalty or other action sought in the complaint; or (c) deny the alleged violation.

C. Copy of Ordinance. A copy of the enforcement provisions of this Ordinance shall be served with the complaint.

D. Service. A complaint under this section shall be served upon the Respondent by certified mail, return receipt requested, or by Sheriff, Deputy Sheriff, constable or Jay Police Officer. If service is by certified mail, the return receipt, properly endorsed and postmarked shall be prima facie evidence of the completion and date of such service. If service is made in hand the Maine Rules of Civil Procedure shall apply to the making of such service and proof thereof.

Seventeenth, Sec. 40.

§4B-103 RESPONSE TO COMPLAINT

The Respondent shall file and serve upon the Environmental Enforcement Counsel a written response to the complaint within twenty (20) days following service of the complaint:

- A. If Respondent admits to all of the allegations contained in the complaint and consents to the penalty or other action requested in the complaint, the response shall unequivocally and unambiguously so state;
- B. If Respondent admits to the violation as alleged in the complaint, but contests either the amount of the penalty or the terms of any other action sought in the complaint or both, the response shall

expressly admit the allegations and specifically state all of the factual and legal circumstances which Respondent contends support a different disposition; and

C. In all other instances, the response shall specifically and clearly admit or deny each of the factual allegations in the complaint or state clearly that Respondent lacks knowledge or information sufficient to form a belief as to the truth of any allegation, which allegation shall be deemed to have been denied. Each and every allegation not specifically addressed in the response shall be deemed to have been admitted. The response shall also state all factual or legal matters upon which Respondent bases any defense or affirmative defense and identify any additional factual or legal issues which Respondent intends to place at issue in the proceeding.

Seventeenth, Sec. 41.

§4B-104 DEFAULT ORDER

A. Default. A Respondent may be found to be in default by the presiding officer: (1) after motion, upon failure to file a timely response to the complaint; (2) after motion or *sua sponte*, upon failure to comply with a prehearing or hearing order of the presiding officer; or (3) after motion or *sua sponte*, upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of a failure to appear at a hearing shall be made against the Respondent unless the Complainant presents sufficient evidence to the presiding officer to establish a prima facie case against the Respondent. Any motion for a default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have twenty (20) days from service to reply to the motion. Default by Respondent constitutes, for purposes of the pending enforcement action only, an admission of all facts alleged in the complaint and a waiver of Respondent's right to a hearing on such factual allegations. Default by the Complainant shall result in the dismissal of the complaint with prejudice.

B. Procedures Upon Default. Upon finding that default has occurred, the presiding officer shall issue a default order against the defaulting party.

C. Contents of a Default Order. A default order shall include findings of facts showing the grounds for the order, conclusions regarding all material issues of law or discretion, the penalty to be assessed and/or the terms and conditions of permit revocation, suspension or modification as appropriate.

D. Relief From Default. For good cause shown, the presiding officer, as appropriate, may set aside a default order.

§4B-105 BOARD DECISION

After receipt of Respondent's response to the complaint or after the deadline for receipt of such response, the Board may take any of the following actions:

A. In the event that the Respondent admits to the violation and agrees to any monetary penalty and/or the terms and conditions of the revocation, suspension or modification recommended in the complaint by the Environmental Enforcement Counsel, the Board will ratify or disapprove those sanctions. In the event that the Board fails to take any action within (30) days of receipt of Respondent's answer, the sanctions recommended in the complaint by the Environmental

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Enforcement Counsel will be deemed acceptable to the Board and any monetary penalty will be due and payable by the Respondent within 30 days;

B. In the event the Respondent admits to the violation set forth in the complaint, but contends that the amount of the monetary penalty and /or the terms and conditions of the suspension, revocation or modification recommended by the Environmental Enforcement Counsel are inappropriate, or in the event the complaint does not seek specific monetary penalties or other specific sanctions but Respondent does not contest the allegations, the Board will conduct a hearing limited to the amount of the monetary penalty and/or the terms of the revocation, suspension or modification. The Board will determine the amount of the monetary penalty and/or the terms and conditions of the suspension, revocation or modification;

C. In the event the Respondent denies that a violation occurred, the Board will decide whether to dismiss the enforcement action or to proceed with a hearing;

D. In the event the presiding officer has found the Respondent to be in default as set forth in §4B-104, the Board may enter a final order pursuant to §4B-108; or

E. The Board may institute judicial proceedings in accordance with §4B-113 of this Chapter.

Fourteenth, Sec. 13

§4B-106 PREHEARING CONFERENCE

A. Purpose of Prehearing Conference. Unless the conference appears unnecessary, the presiding officer, at any time before an enforcement hearing begins, shall direct the Environmental Enforcement Counsel and the Respondent, either personally or through a representative, to appear at a conference to consider: (1) the simplification of facts not in dispute; (2) the exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will void unnecessary proof; (3) the limitation of the number of expert or other witnesses; (4) setting a time and place for the hearing; and (5) any other matters which may expedite the disposition of the proceeding.

B. Exchange of Witness Lists and Documents. Unless otherwise ordered by the presiding officer, the Environmental Enforcement Counsel and Respondent shall exchange (1) the names of the expert and other witnesses each intends to call, together with a brief narrative summary of their expected testimony; and (2) copies of all documents and exhibits to be offered as evidence. Documents and exhibits shall be marked for identification as ordered by the presiding officer. Documents that have not been exchanged and witnesses whose names have not been exchanged shall not be introduced into evidence or allowed to testify at the enforcement hearing without permission of the presiding officer.

C. Record of the Prehearing Conference. No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the presiding officer upon motion of a party or *sua sponte*. The presiding officer shall prepare and file for the record a written summary of the action taken at the conference. The summary shall incorporate any written stipulations or agreements and all rulings and appropriate orders.

D. Unavailability of a Prehearing Conference. If a prehearing conference is unnecessary or impracticable, the presiding officer, on motion or *sua sponte*, may direct other arrangements to accomplish any of the objectives set forth in this section.

§4B-107 ENFORCEMENT HEARINGS

This section shall apply to all hearings which may result in the modification, suspension or revocation of any permit, approval or order or the imposition of a monetary penalty whenever such hearings are based upon the alleged violation of any provisions of this Ordinance or the terms or conditions of any permits, approvals or orders issued by the Board pursuant to this Ordinance.

A. Duties and Responsibilities of the Presiding Officer

1. The presiding officer at all hearings shall be either (a) the Chairman of the Board, if present and willing to preside, or (b) a member of the Board selected by those members present at the hearing.
2. The presiding officer shall have the authority to:
 - a. Hold a conference for the simplification of issues;
 - b. Issue subpoenas requested by the parties;
 - c. Place witnesses under oath;
 - d. Take action necessary to maintain order;
 - e. Rule on motions and procedural questions arising before and during the hearing;
 - f. Call recesses or adjourn the hearing; and
 - g. Prescribe and enforce general rules of conduct and decorum.

B. Role of Board Members. The Board Members, including the presiding officer, collectively shall be responsible for reviewing evidence and hearing testimony and argument in order to determine the appropriate disposition of the complaint.

C. Role of Code Enforcement Officer and Advisory Staff to the Board. The Code Enforcement Officer shall advise the Board when requested with regard to documentary evidence produced and testimonial evidence heard at the enforcement hearing. The Code Enforcement Officer will not act as an advocate at the hearing. However, the Code Enforcement Officer may be called as a witness by the Environmental Enforcement Counsel or the Respondent if necessary. The Board may also retain legal counsel or expert witnesses as it deems necessary.

D. Ex parte Communications Prohibited. Throughout any enforcement proceeding:

1. No presiding officer, Board Member or Advisory Staff Member in a proceeding shall communicate, directly or indirectly, in connection with any issue relating to the merits with either the Environmental Enforcement Counsel or Respondent, or any other person legally

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interested in the outcome of the proceedings except upon notice and opportunity for all parties to participate pursuant to order of the presiding officer.

2. Nothing in this section prohibits inquiry by an Environmental Enforcement Counsel, Respondent, presiding officer, or Board Member concerning the scheduling or rescheduling of any event contained in the procedural schedule, any filing or any order.

3. Except as otherwise provided by law, this section shall not prohibit any Board Member or presiding officer from communicating in any respect with other Board Members or having the aid or advice of the Code Enforcement Officer, counsel or consultants retained by the Board who have not participated and will not participate in the enforcement proceeding in an advocate capacity.

E. General Conduct

1. Opening statement. The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

2. Complaint. The presiding officer shall read or otherwise have inserted in the official record of the proceeding the complaint and the response.

3. Transcription of Testimony. All testimony at hearings before the Board may be recorded as determined by the presiding officer and, as necessary, transcribed.

4. Witnesses. Witnesses shall be sworn and shall testify under oath. Witnesses will be required to state for the record their names, residence, and business or professional affiliation for purposes of the hearing. Witnesses may be compelled to attend, testify and produce records if subpoenaed by the Board.

5. Continuance. All hearings conducted pursuant to this section may be reasonably continued for reasonable cause and reconvened from time to time and from place to place by the Board or presiding officer as circumstances require. All orders for continuance shall specify the time and place at which such hearings shall be reconvened. The Board or presiding officer shall provide reasonable notice of the time and place of such a reconvened hearing to any person who so requests in writing, to the Respondent and to the public.

F. Order of Proceedings. The order of proceedings, unless modified by the presiding officer to facilitate the hearing, shall be as follows:

1. The Environmental Enforcement Counsel may offer an opening statement;
2. The Respondent may offer an opening statement;
3. The Environmental Enforcement Counsel may present evidence. Witnesses may be cross-examined by Respondent and questioned by Board Members, Staff or Board counsel after the completion of the witness' direct testimony;

4. The Respondent may present evidence. Witnesses may be cross-examined by the Environmental Enforcement Counsel and questioned by Board Members, Staff, or Board counsel after the completion of the witness' direct testimony;
5. The Environmental Enforcement Counsel may put on a rebuttal case;
6. The Environmental Enforcement Counsel may offer a closing statement;
7. The Respondent may offer a closing statement; and
8. The Environmental Enforcement Counsel may offer a rebuttal.

G. Varying Order of Appearance. When circumstances warrant, the Board or the presiding officer may vary the order in which witnesses appear and the order in which testimony is given or witnesses are questioned.

H. Record. A full and complete record shall be kept of all enforcement hearings. The records shall include, but not be limited to, the complaint, supporting documents, all exhibits, proposed findings of fact and conclusions submitted by either party or by Board Staff and counsel, if any, staff documents, Respondent's answer and supporting documents, consent orders, if any, Board findings of fact and orders and the recording or transcript of the proceedings, if prepared.

At any time prior to the Board's final decision after the close of the enforcement hearing, the Board may reopen the record for further proceedings consistent with this section, provided, however, that the Board shall give written notice of such further proceedings at least ten (10) days prior to such proceedings. After the close of an enforcement hearing held pursuant to Section 4A-103, the Board may reopen the record after giving whatever notice is reasonably possible under the circumstances.

I. Burden of Proof. The Environmental Enforcement Counsel has the burden of proving that the alleged violation occurred and that proposed penalty, revocation, suspension, or modification of the permit is appropriate. Following the establishment of a prima facie case, Respondent shall have the burden of presenting and of going forward with any defenses, affirmative defenses, or mitigating circumstances.

J. General Evidence.

1. Admissibility. Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded by the presiding officer. The Board's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted to the Board. Existence and duration of a violation may be established by any credible evidence including but not limited to observations, operating parameters, reporting information, records, correlations, operating data, environmental indices, health indices, compliance assurance data, test results, opinion evidence or other evidence.

2. Official Notice. The Board may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters

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within its specialized knowledge and of statutes, regulations and nonconfidential Board records. Facts officially noticed shall be included and indicated as such in the record.

3. Official Record. An official record or lack thereof may be evidenced in the manner provided in Rule 44 of the Maine Rules of Civil Procedure.

4. Objections. All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefor shall be timely stated at the time of such ruling during the course of the hearing. If during the course of, or after the close of, the hearing and during its deliberations the Board determines that the ruling of the presiding officer was in error, it may reopen the hearing or take such action as it deems appropriate to correct such error.

5. Offer of Proof. An offer of proof may be made in connection with an objection to a ruling of the presiding officer excluding or rejecting any testimony or question on cross-examination. Such offer of proof shall consist of a statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness.

K. Documentary and Real Evidence.

1. All documents, materials and objects offered in evidence, shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. The presiding officer may require, after prior oral or written reasonable notice, that any person offering any documentary or photographic evidence shall provide the Board with a specified number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably suitable for reproduction.

2. All written testimony and documents, materials and objects admitted into evidence shall be made available during the course of the hearing for public examination. All such evidence will be available for public examination at the Town Office or as otherwise ordered, during normal business hours.

Seventeenth, Sec. 42, 43 and 44. Eighteenth, Sec. 12.

§4B-108 ENFORCEMENT ORDERS

Following the conclusion of an enforcement hearing, or in the event of a default by Respondent, the Board shall within 30 days thereafter make findings of fact based on the record. The Board shall issue an order aimed at abating or correcting the violation and ensuring that the violation does not recur, and, in addition, may modify any permit, approval or order in whole or in part, condition the permit, approval or order on reasonable requirements or revoke or suspend a permit, approval or order, and assess a penalty, whenever the Board finds:

- A. The Respondent violated any term or condition of the permit, approval or order;
- B. The Respondent obtained a permit, approval or order by false statement, misrepresentation or failure to disclose fully all relevant facts;
- C. The permitted or approved activity poses a threat to human health or welfare;

D. There has been a change in any condition or circumstance that requires revocation, suspension conditioning or a temporary or permanent modification of the terms of the permit, approval or order; or

E. The Respondent violated any provision of this Ordinance.

The order shall state the date upon which it becomes effective and shall advise the Respondent that it may seek judicial review. The findings and order shall be served on the Respondent as provided in Section 4B-102(D).

All orders entered by the Board pursuant to this section shall be considered final Board action as of the date of the order for purposes of judicial review.

Seventeenth, Sec. 45.

§4B-109 PENALTIES

A. Any person who violates any provision of this Ordinance or terms or conditions of any order, permit, approval or decision of the Board shall be subject to the following civil penalties, due and payable to the Town of Jay:

1. For violations of Chapter 5. A penalty of not less than \$100 nor more than \$2500, unless it is demonstrated that the person has violated Chapter 5 within the past two years. If such a previous violation has occurred, the maximum penalty may exceed \$2500 but shall be no more than \$25,000. Penalties may be assessed on a per day basis. If the economic benefit resulting from the violation exceeds the maximum applicable penalties, the maximum penalties may be increased. When so increased, the maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit shall, without limitation, include the costs avoided or enhanced value accrued as a result of the violation. Economic benefit shall be deemed to have resulted from a violation if it is shown that the violation was a substantial, although not necessarily exclusive, factor in bringing about the benefit.

2. For other violations of this Ordinance or permits issued thereunder. A penalty of not less than \$100 nor more than \$10,000 for each day of the violation. The maximum civil penalty for violation of this Ordinance or permits issued hereunder may exceed \$10,000 for each day of the violation when it can be shown that there has been a previous violation of the same Ordinance provision by the same person within the 5 preceding years. If the economic benefit resulting from the violation exceeds the applicable maximum penalties, the maximum penalties may be increased. When so increased, the maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit shall, without limitation, include the costs avoided or enhanced value accrued as a result of the violation. Economic benefit shall be deemed to have resulted from a violation if it is shown that the violation was a substantial, although not necessarily exclusive, factor in bringing about the benefit.

B. In setting penalties, the Board may consider all relevant factors including any one or more of the following:

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1. Prior violations by the same person;
2. The degree of environmental damage that cannot be abated or corrected;
3. The extent to which the violation continued;
4. Benefits derived by the person as a result of the violation;
5. Importance of setting a civil penalty substantial enough to deter future violation;
6. Whether penalties have been imposed by another governmental agency for the same incident(s);
7. the economic impact of the penalty on the violator; and
8. the duration of the violation as established by any credible evidence including but not limited to observations, operating parameters, reporting information, records, correlations, operating data, environmental indices, health indices, compliance assurance data, test results, opinion evidence or other evidence.

The Board is not required to make itemized express findings on these factors.

C. Payment of any penalty assessed shall be made in cash or by a certified check drawn on a recognized financial institution, made payable to “Town of Jay” in an amount equal to the full amount of the penalty.

D. Any respondent found to have violated this Ordinance may be ordered to pay all the costs of the enforcement proceeding including but not limited to fees of the Environmental Enforcement Counsel, fees of expert witnesses and consultants, costs of discovery and exhibits.

Seventeenth, Sec. 46, 47 and 48. Eighteenth, Sec. 13 and 14.

§4B-110 JUDICIAL REVIEW

Any person aggrieved by a final Board action or decision in an enforcement or emergency proceeding pursuant to this section may seek judicial review in accordance with state law within thirty (30) days of the date of the final Board action.

§4B-111 STAY

The filing of a complaint by a Respondent shall not operate as a stay of the final Board action pending judicial review unless otherwise ordered by the Court.

§4B-112 NUISANCE

Any property or use existing in violation of this Ordinance is a nuisance.

§4B-113 JUDICIAL ENFORCEMENT

A. General. In the event of a violation of any provision of this Ordinance or of any order, permit, approval or final decision or action of the Board or decree of court, as the case may be, the Town of Jay may institute judicial proceedings in accordance with state law for an order enjoining those acts or practices which constitute such a violation, for an order directing compliance with this Ordinance, or any order, permit, approval, condition or final decision or action pursuant to this Ordinance; for an order assessing penalties or any appropriate combination of actions.

B. Substantial and Immediate Danger to Health, Safety or General Welfare. If the Board finds that the violation of any provision of this Ordinance or the failure to comply with any order, permit, approval, condition, or final decision or action of the Board constitutes a substantial and immediate danger to the health, safety or welfare of any person(s), or property, or the environment of the Town of Jay, the Town of Jay may initiate immediate injunction proceedings to abate or correct such violation.

C. Recovery of Costs. In any action that the Town of Jay institutes before the Court to enforce any provisions of this Ordinance, the prevailing party in such action shall be allowed to recover attorneys fees incurred in connection with such action.

CHAPTER 5

SUBDIVISIONS

Part

1. Short Title and Definitions
2. Prohibitions
3. Application Procedure
4. General Design Guidelines and Requirements
5. Approval-Standards
6. Appeals, Violations, Penalties and Waivers

PART 1

SHORT TITLE AND DEFINITIONS

Section

- §5-101 Short Title
- §5-102 Definitions

§5-101 SHORT TITLE

This Chapter shall be known and may be cited as "**Jay Environmental Control and Improvement Ordinance-Subdivisions**"

§5-102 DEFINITIONS

A. In this Chapter, unless the context otherwise requires, the following words and phrases shall have the following meanings:

- 1. Subdivision.** "Subdivision" means: a subdivision as defined in Title 30-A M.R.S.A. Section 4401 et seq. and as hereafter amended.
- 2. Tract or parcel of land.** "Tract" or "Parcel of Land" means all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- 3. Jay Subdivision Permit.** "Jay Subdivision Permit" means the permit issued by the Board under this Chapter and includes all items submitted to obtain the approval.

4. Permanent Marker. "Permanent Marker" means a granite or cement monument, an iron pin or a drill hole in ledge.

5. Permanent Monument. "Permanent Monument" means a granite or cement monument not less than four (4) inches square with an iron reinforced rod at least 5/8" across the top capped with a surveyor's name and number. The Permanent Monument shall be set at least four (4) feet in the ground; provided, however, the Board may alter this requirement when the conditions on the ground make it impractical or impossible to reach four (4) feet in the ground.

6. Angle Marker. "Angle Marker" means an iron reinforced rod or similar rod capped with a surveyor's name and number.

7. Applicant. "Applicant" means any person applying under Part 3 of this Chapter for a Jay Subdivision Permit.

8. Official Submittal Date. "Official Submittal Date" means the date upon which the Board determines that a subdivision application is complete.

9. Dwelling Unit. "Dwelling unit" means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments.

10. Mobile Home. "Mobile Home" means those units constructed after June 15, 1976, commonly called "*newer* mobile homes," that the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, that in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and that are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities including the plumbing, heating, air conditioning or electrical systems contained in the unit.

This term also includes any structure that meets all the requirements of this subparagraph 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 States Code, Title 42, Section 5401, et seq.

11. Mobile Home Park. "Mobile Home Park" means a parcel of land under unified ownership used for the placement of 3 or more Manufactured Homes.

12. Modular Home. "Modular home" means manufactured homes commonly called "modular homes" that the manufacturer certifies are constructed in compliance with Title 10, chapter 951, and rules adopted under that chapter, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained in the unit.

13. Manufactured Housing. "Manufactured housing" means a structural unit or units designed for occupancy and constructed in a manufacturing facility and then transported by the use of its own chassis, or placed on an independent chassis, to a building site where it is used for housing.

14. Mobile Home Park Lot. "Mobile Home Park Lot" means the area of land on which an individual

home is situated within a mobile home park and which is reserved for use by the occupants of that home.

15. New structure or structures. "New structure or structures" includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this subchapter.

16. Principal Structure. "Principal structure" means any building or structure in which the main use of the premises takes place.

17. Freshwater wetland. "Freshwater wetland" means freshwater swamps, marshes, bogs and similar areas which are:

A. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and

B. Not considered part of a great pond, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

18. Abutter. "Abutter" means any person who owns property contiguous to the Proposed Subdivision Parcel, or directly across any public or private street or way adjacent to the Proposed Subdivision Parcel. In the case of a revision or amendment to a previously approved subdivision, abutter shall include those abutters to the original subdivision as well as all current owners within the original subdivision.

19. Proposed Subdivision Parcel. "Proposed Subdivision Parcel" means all or a portion of any parcel(s) of land that the applicant is submitting for subdivision approval.

20. Multiple Unit Housing. "Multiple Unit Housing" means a structure or structures located on a single lot, which structures are designed or used to house 2 or more families.

21. Farmland. "Farmland" means a parcel consisting of 5 or more acres of land that is:

A. Classified as prime farmland, unique farmland or farmland of statewide or local importance by the Natural Resources Conservation Service within the United States Department of Agriculture; or

B. Used for the production of agricultural products as defined in Title 7 M.R.S.A. Section 152.2.

22. Infrastructure Improvements. "Infrastructure Improvements" means roads, drainage and stormwater systems, common water and sewer systems whether public or private.

23. Substantial Construction. "Substantial Construction" means completing of at least 30% of the required infrastructure improvements measured as a percentage of total estimated cost of improvements.

B. In addition, Chapter 1 contains general definitions applicable throughout this Chapter.

PART 2

PROHIBITIONS

Section

§5-201 Prohibitions

§5-202 Standards for Jurisdiction and Exemptions

§5-201 PROHIBITIONS

A. No person may sell, lease, develop, grade, build upon or convey for consideration, offer or agree to sell, lease, develop, build upon or convey for consideration any land or dwelling unit:

1. In any subdivision unless the subdivision (A) has been approved by the Board, (B) the subdivision has been approved, when applicable, by the M.D.E.P, pursuant to Title 38 M.R.S.A. Chapter 3, subsection I, article 6, and (C) the Final Plan and the Board Order evidencing the Board's approval and a permit evidencing approval under Title 38 M.R.S.A. Chapter 3, subsection I, article 6, have been recorded in the Franklin County Registry of Deeds; if the subdivision is exempt from Title 38 M.R.S.A. Chapter 3, subsection I, article 6 by the operation of Title 38 M.R.S.A. Section 488(5), the recorded subdivision plan must note the exemption.

B. No person who has a Jay Subdivision Permit shall sell or convey any land in the subdivision unless a minimum of two (2) Permanent Monuments have been set within the subdivision and permanent markers have been set at all lot corners of the lots to be sold or conveyed and angle markers have been placed at all angles on the subdivision perimeter.

C. No public utility, as defined in Title 35-A M.R.S.A. Section 102.13, shall install or deliver services to any lot or dwelling unit in a subdivision unless the subdivision is an Exempt Division or has been approved by the Board and such approval is recorded in the Franklin County Registry of Deeds.

D. The violation of any of the conditions of a Jay Subdivision Permit shall be considered a violation of this Ordinance and subject to Chapter 4B.

E. A building official may not issue any permit for a building or use within a subdivision unless the subdivision has been approved under this Chapter and under Title 38, Chapter 3, Subchapter I, Article 6, where applicable.

§5-202 STANDARDS FOR JURISDICTION AND EXEMPTIONS

In determining whether the division of a tract or parcel of land into three (3) or more lots or dwelling units is a division creating a subdivision see Title 30-A M.R.S.A. Section 4401.4.

PART 3

APPLICATION PROCEDURE

Section

- §5-301 Pre-application Meeting
- §5-302 Jay Subdivision Permit Application
- §5-303 Board Action Upon Submission
- §5-304 Board Action After Completed Application has been Submitted
- §5-305 Board Action After Approval of the Preliminary Application
- §5-306 Conditions of Jay Subdivision Permit

§5-301 PRE-APPLICATION MEETING

Applicants may request to be placed on Board's agenda for a pre-application meeting at least ten (10) days in advance of a regularly scheduled meeting by contacting the Code Enforcement Officer. The purpose of the pre-application meeting is to meet with the Board prior to formal submission, to present a sketch plan and make a verbal presentation regarding the site and the proposed subdivision. The pre-application meeting is an optional step for the applicant and is not required.

- A. Submissions:** The Pre-application Sketch Plan shall show, in simple sketch form, the proposed subdivision, and other features in relation to existing conditions. The Sketch Plan, which may be a freehand penciled sketch, will be supplemented with general information to describe or outline the existing conditions of the site and the proposed subdivision.
- B. On-Site Inspection:** Within thirty (30) days of the pre-application meeting, the Board may conduct an on-site inspection of the property.
- C. Ownership Interest:** The applicant shall furnish written evidence showing right, title or interest (option, contract for sale, etc.) in the property to be subdivided.
- D. Liquidation Harvesting:** The applicant shall submit a statement concerning timber harvesting resulting in any violation of the Liquidation Harvesting Rule.

§5-302 JAY SUBDIVISION PERMIT APPLICATION

A. General.

1. Application for a Jay Subdivision Permit shall be made in accordance with Chapter 3 of this Ordinance and shall contain such additional information relating to the subdivision as required by this Section.

2. The submission of an application for a Jay Subdivision Permit shall not be considered to initiate the review process for the purpose of bringing the application under the protection of Title 1 M.R.S.A. Section 302 as amended.

3. **Fees.** The following Filing Fees and Review Fees shall be assessed against all applicants for Jay Subdivision Permit approval, including amendments or revisions to previously approved plans:

a. **Filing Fee.** All applications for Subdivision approval, including amendments or revisions to previously approved plans, shall be accompanied by a nonrefundable filing fee. The filing fee for new subdivisions shall be \$100 per lot or dwelling unit and the filing fee for amendments or revisions to previously approved plans shall be \$50 per lot or dwelling unit. Filing fees shall be made payable by check to the Town of Jay.

b. **Review Fee.** The applicant shall pay all direct costs specifically related to the application, including, legal, engineering, environmental consulting, survey, architectural, land use planning, other professional fees, preparation of information and materials for the Board, and other costs specifically related to the application (collectively "Review Costs"). The JAY SUBDIVISION REVIEW ACCOUNT is hereby established. All applications for Subdivision approval, including amendments or revisions to previously approved plans, shall be accompanied by an additional payment of \$150 for each lot or dwelling unit, which shall be deposited in the SUBDIVISION REVIEW ACCOUNT. The Review Fee may be used by the Board for Review Costs.

If the initial amount of the Review Fee is inadequate or anticipated to become inadequate, the Board shall make a reasonable estimate of the additional fee required to complete review and issue a notice to the applicant containing the following: (i) a request for payment of the additional Review Fee, and (ii) the general nature of the Review Costs expected to be incurred.

The Board and the Code Enforcement Officer may suspend activity regarding the application until any additional Review Fee has been paid. If an additional Review Fee is not paid within 60 days after notice, the Board may deny an application. Final payment of the Review Fee shall occur before issuance of the approval, disapproval, or approval with conditions.

When no further review is required for an application, any remaining Review Fee in the SUBDIVISION REVIEW ACCOUNT shall be refunded to the applicant. Such refund shall be complete no later than 60 days after the approval, denial, or approval with conditions of the application. Such refund shall be accompanied by a final accounting of expenditures from the SUBDIVISION REVIEW ACCOUNT specifically related to the application.

4. The review process for a Subdivision Permit application shall commence when the Board determines that such application is complete and has issued a receipt indicating that a completed application has been submitted.

5. A determination by the Board that a completed application has been submitted in no way commits or binds the Board to issue a Jay Subdivision Permit.

6. As provided for in Chapter 2 § 2-110(C), no item of business or plan shall be placed on the Board agenda for any meeting unless such item or plan shall have been submitted to the Board not less than ten (10) days prior to the date of a meeting or other proceeding, provided, however, that the Board may, upon request or on its own motion, waive the 10 day advance submission requirement. All applications, plans and other materials shall be submitted to the Code Enforcement Officer ten (10) days prior to the date of the meeting or other proceeding for review and distribution to the Board.

B. Application Form. The applicant shall submit eleven (11) copies of the application for a Jay Subdivision permit which shall consist of the following subsections:

1. General Information (see Subsection C),
2. Preliminary Plan (see Subsection D),
3. Topographic, Soil Erosion and Phosphorus Control Plans (see Subsection E), and
4. Other (see Subsection F).

C. The applicant shall submit a written application containing the following general information in the following order:

1. Project name and the name and address and phone number(s) of applicant.
2. Name, address and phone number(s) of the owners of the tract or parcel of land or structure to be subdivided (if other than applicant).
3. If applicant is a corporation, state whether the corporation is authorized to do business in Maine, and attach a copy of a current Certificate of Good Standing from the Secretary of State of Maine.
4. Name, phone number(s) and address of applicant's authorized representative (if different than applicant). Attach letter of authorization signed by property owner that authorizes the owner's representative to act on behalf of the property owner.
5. Name, phone number(s) and address and number of Registered Professional Engineer, Land Surveyor or Planner who prepared the preliminary plan of the subdivision.
6. Address to which all correspondence from the Board should be sent.
7. The nature of the applicant's real estate interest in the parcel or structure to be subdivided and a copy of the instrument creating the applicant's interest.
8. A list of the owners of record of any land abutting the tract or parcel of the lot to be subdivided or the lot on which the structure to be subdivided sits.
9. A statement from the applicant as to whether the tract or parcel of land or structure to be subdivided is in the entire or contiguous ownership of applicant.
10. The map and lot number from the Jay Tax Assessors office that shows the location of the tract or parcel of land or structure to be subdivided.
11. A description of the current use of the tract or parcel of land or structure to be subdivided and whether it is within the jurisdiction of the Jay's Shoreland Zoning Ordinance and Floodplain Management Ordinance.
12. Total acreage of tract or parcel of land to be subdivided and the total number of lots proposed. For structures, the total square footage of the structure, the number of dwelling units proposed, and the total square footage of each dwelling unit.
13. Proposed method of sewage disposal and the results of any on-site soils investigation of the tract.

14. Proposed use of the tract or parcel of land or structure to be subdivided.
15. Proposed method of water supply system. Attach evidence of adequate ground water supply and quality submitted by a well driller or a hydro geologist familiar with the area.
16. Copies of any easement, restrictive covenants of record or other instruments on record affecting the property, including any proposed easements, restrictive covenants or other instruments to be recorded in connection with the subdivision.
17. A statement of applicant's financial and technical capability to complete the proposed subdivision improvements and to comply with the terms and conditions of this Chapter.
18. If the application constitutes a revision or amendment to a previously approved subdivision, a copy of the approved subdivision plan.
19. A copy of the approved Driveway or Entrance permit issued by the Maine Department of Transportation if a driveway or entrance will enter onto Route 4, Route 17, Route 133, Route 140, Route 156, the Maxwell Road, the Crash Road, or the Riley Road.
20. For applications containing roads, a copy of the Proposed Town Way Permit, if previously issued by the Planning Board, or, for applications proposing Private Roads, submittals requirements as outlined in §5-401(A)(6).
21. A statement concerning timber harvesting resulting in any violation of the Liquidation Harvesting Rule.
22. Municipal service impact analysis, if required by the Board.
23. The type and amount of a performance guarantee sufficient to defray all costs and expenses of the proposed infrastructure improvements resulting from the subdivision.

D. Preliminary Plan.

1. The preliminary plan for the proposed subdivision shall be submitted with five (5) copies and one copy of the plan reduced to a size of 8 1/2" by 11" to the Board and shall be embossed by a seal of a land surveyor registered in Maine with the Maine Board of Registration For Professional Land Surveyors. The surveyor shall certify that the survey is in accordance with the standards of the Maine Board of Registration For Professional Land Surveyors that the information shown on the plan has been obtained from the actual field survey on the ground, that it is correct, and that there are no encroachments either way across the property lines and no known easements except those as may be shown. The preliminary plan shall not be less than 18 inches by 24 inches and shall be drawn to a scale of 1 inch equals not more than 100 feet.
2. The preliminary plan shall include the following information:
 - a. Name of proposed subdivision; location of subdivision; name of applicant; and signature and seal of Professional Land Surveyor.
 - b. Lot/unit numbers.
 - c. Location of permanent monuments/markers and angle markers.

- d. Date, magnetic bearing date, north point and graphic map scale.
- e. Boundaries of the tract or subdivision, proposed lot lines with approximate dimensions and lot areas and total area of the tract or parcel of land to be subdivided.
- f. Location of temporary markers to enable the Board to locate each lot readily and appraise the basic lot layout in the field. At a minimum, temporary markers shall be set at all corners of survey and lot lines, including all angle points, and all subdivision perimeter survey lines shall be brushed out to make the line visible.
- g. Location of all parcels to be dedicated to public use.
- h. Names of Abutters and subdivisions. Reference to recorded subdivision plans adjacent to the project boundary, and to the name, and book and page number as recorded in the Franklin County Registry of Deeds of all abutters. This requirement may be relaxed by the Board for subdivision plan revisions submitted pursuant to Chapter 5, Section 5-306.A.4.
- i. Location of rivers, streams and brooks within or abutting the proposed subdivision, wetlands regardless of size, and areas subject to storm flooding.
- j. Location of all required soils investigation test pits.
- k. Location and size of existing or proposed structures.
- l. Location of significant wildlife habitat, archaeological sites, rare and endangered species, historic buildings and sites and scenic locations as identified in Comprehensive Plan.
- m. Location and size of any sewers and water mains and other utilities within or adjoining the subdivision; location and size of any culverts and drains.
- n. Location, names and widths of existing and proposed streets, highways, easements and rights-of-way within or adjoining the subdivision. All street names shown for proposed streets located in a subdivision shall be checked against local records to assure that none are duplicates of existing street names or so similar as to cause confusion. All roads in the subdivision shall comply with the Road Ordinance of the Town of Jay Maine.
- o. Type, location, profile and cross-section of all existing and proposed surface water drainage.
- p. The location of farmland.
- q. Location of watershed boundaries if located in the direct watershed of North, Parker, Pease, Robinson or Wilson Ponds.
- r. Location and type of any easements.
- s. Suitable space on the plan to record the date and conditions of approval, if any. This space shall be substantially similar to the following form:

APPROVED DATE: _____

NOTICE

This approval is limited to the requirements of Title 30-A M.R.S.A. Section 4401, et seq., and Chapter 5 of the Jay Environmental Control and Improvement Ordinance and the Jay Subdivision Permit recorded herewith. Roads and public open spaces shown on the Final Plan may only be accepted by a vote of the Town of Jay. This approval does not indicate compliance with any other federal, or state statutes or local ordinances.

The above Title Block and notice shall appear on all plans submitted for review and formal approval by the Board.

t. A reference to the book and page of the Board order approving the subdivision recorded in the Franklin County Registry of Deeds. The reference shall be similar to the following form:

See Town of Jay Planning Board Findings Recorded in the Franklin County Registry of Deeds in Book _____ , Page _____

E. Topographic, Soil Erosion and Phosphorus Control Plans.

1. The Topographic Plan for the subdivision shall show the topography of the tract or parcel to be subdivided at 20 foot contour intervals and shall show the location of the existing natural or man-made features influencing the layout of the subdivision. The Board may require other contour intervals if necessary to review a particular application.
2. The Soil Erosion Plan shall show the soil erosion, storm water run-off and sediment control plans for the subdivision, including how and where the applicant intends to control surface water, erosion and sediment.
3. A Phosphorus impact analysis shall be submitted if located in the direct watershed of North, Parker, Pease, Robinson or Wilson Ponds.

F. Other Information:

1. The applicant shall submit a written statement from any public utility or municipal department (including, but not limited to, where applicable, Town Sewer and Water Department, Well Drilling Company) that will service the subdivision stating that a sufficient or adequate supply of its product will be available to meet the needs of the subdivision and statements from the fire, police, recycling and transfer, highway and school departments concerning their review of the subdivision.

2. In areas where on site waste water disposal is proposed, the applicant shall submit a certification or an opinion from a licensed site evaluator which shall state that all lots proposed by the subdivision application have situated within their bounds a location suitable for a subsurface disposal system.
3. The applicant shall submit evidence demonstrating that there will be no substantial adverse effect on ground water quality, such as:
 - a. A comprehensive list, including physical and chemical characteristics and projected quantities of wastes to be disposed of or stored within the proposed development which may potentially contaminate the ground water.
 - b. Methods for preventing ground water pollution as the result of the disposal and/or storage of wastes.
 - c. An evaluation of the geological, hydrologic, and soils conditions of the development site.
 - d. Data establishing background water quality.
 - e. Proposed plan of action, and alternatives, to be followed in the event the proposed development results in ground water contamination.
4. Such other information as the Board may reasonably require pursuant to this Section and Section 5- 401, including revised submissions.
5. The applicant shall submit any other information that it determines will assist the Board in making its evaluations and its findings of the subdivision pursuant to Section 5-501.

G. Temporary Layout. The applicant shall lay out his proposed subdivision on the tract or parcel of land with sufficient temporary markings to enable the Board to make an on-site inspection of the proposed subdivision. The temporary markers shall also indicate where the permanent markers will be placed. At a minimum, temporary markers shall be set at all corners of survey and lot lines and all subdivision perimeter survey lines shall be brushed out to make the line visible.

§5-303 BOARD ACTION UPON SUBMISSION

- A. Upon receiving a subdivision application, the Board will issue the applicant a dated receipt and shall notify all Abutters by certified mail for new subdivisions and by regular mail for all amendments to previously approved plans, and the clerk and the reviewing authority of municipalities that abut or includes any portion of the proposed subdivision, specifying the location of the proposed subdivision, a general description of the project, and that abutters have five (5) days to request a public hearing. The Board will notify by mail a public drinking water supplier if the subdivision is within its source water protection area.
- B. Within thirty (30) days after receipt of an application the Board shall notify the applicant in writing either that the application is a complete application or, if the application is not complete, the specific additional information needed to make a complete application.
- C. The Board may schedule an on-site inspection of the proposed subdivision if it determines such inspection necessary to its review of the application.

- D. When the Board has determined that an application is complete, it shall issue the applicant a receipt stating the Official Submittal Date.
- E. After the Official Submittal Date, the Board shall begin its consideration and evaluation of the application and shall determine whether it will hold a public hearing. The public hearing date shall be within 30 days after the official submittal date. A public hearing, if ordered, shall be held in accordance with Chapter 3 of this Ordinance.
- F. If the Board decides to hold a public hearing, the Board shall cause notice of the date, time and place of the hearing to be given to the applicant and to be published in a newspaper of general circulation, in Jay at least two (2) times in advance of the hearing. The first date of publication shall be at least seven (7) days prior to the hearing.
- G. If any portion of a subdivision crosses municipal boundaries, all meetings and hearings to review an application shall be held jointly by the reviewing authority from the other municipality and the Board. All meetings and hearings to review an application for a revision or amendment to a subdivision that crosses municipal boundaries must be held jointly by the reviewing authorities from each municipality. In addition to other review criteria, the reviewing authorities shall consider and make a finding of fact regarding the impact on the adjoining municipality. The reviewing authorities in each municipality, upon written agreement, may waive the requirement under this subsection for any joint meeting or hearing.
- H. The Board may not accept or approve final plans or final documents prepared by a licensed professional land surveyor that are not sealed and signed by the professional land surveyor under whose responsible charge they were completed.
- I. The Board shall review all requests for subdivision approval. On all matters concerning subdivision review, the Board shall maintain a permanent record of all its meetings, proceedings and correspondence.

§5-304 BOARD ACTION AFTER A COMPLETED APPLICATION HAS BEEN SUBMITTED

- A. Within 30 days of a public hearing, or if no hearing is held, within sixty (60) days after the Official Submittal Date, or within such other time limit as has been mutually agreed by the Board and the applicant, the Board shall approve, deny, or approve upon any terms and conditions that it considers advisable to satisfy the standards in Section 5-501; satisfy any other regulations adopted by the Board; and protect and preserve the public's health, safety and general welfare.
- B. In all instances, the burden of proof shall be upon the applicant.
- C. The Board shall issue its decision in writing, stating the Boards findings of fact establishing that the application does or does not meet the provisions of this Ordinance and shall state its conclusions of law, including a plain statement of the appropriate rights for reconsideration and judicial review pursuant to Section 5-601 and the time within which rights must be exercised.

§5-305 BOARD ACTION AFTER APPROVAL OF THE PRELIMINARY APPLICATION

A. In the event that the Board approves the preliminary application, the applicant shall submit a Final Plan within 6 months after the date of the Board's approval.

B. The Final Plan:

1. Shall include all changes ordered by the Board when it approved the preliminary subdivision application.
2. Shall have no substantial changes except as provided in paragraph 1 hereof, between the preliminary plan and the final plan;
3. Shall be drawn in ink on mylar suitable for recording in the Franklin County Registry of Deeds;
4. Shall be submitted with one (1) original for recording and three (3) copies;
5. Shall include the following:
 - a. Name of proposed subdivision; location of subdivision; name of applicant; and signature and embossed seal of Professional Land Surveyor.
 - b. Lot/unit numbers.
 - c. Location of permanent monument/marker and angle markers. A minimum of two (2) Permanent Monuments shall be placed on each subdivision and permanent markers shall be set at all lot corners of the lot sold or conveyed. Angle markers shall be placed at all angles on the subdivision perimeter. Within thirty (30) days of approval, or in no event later than May 1 for approvals granted after November 15, the Applicant shall provide the Board with a letter from a professional land surveyor that all permanent monuments/markers and-angle markers have been set in the ground in accordance with the approved Final Plan.
 - d. Date, magnetic bearing date, north point and graphic map scale.
 - e. The final lot lines with dimensions bearing deflection angels, radius and control angles, sufficient to reproduce them on the ground and showing total lot acreage of each lot of the subdivision.
 - f. Location of all parcels to be dedicated to public use.
 - g. Location and type of any easements.
 - h. Location of rivers, streams, brooks and wetlands.
 - i. The boundaries of any flood hazard areas and the 100-year flood elevation. The plan shall indicate that all principle structures on lots in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation
 - j. Location of all required soils investigation test pits.

- k. Location and size of existing or proposed structures.
- l. Location, names and widths of existing and proposed streets and rights-of-way.
- m. Type and location, of all existing and proposed surface water drainage.
- n. Suitable space on the approved plan to record the date and conditions of approval, if any. This space shall be substantially similar to the following form:

APPROVED DATE:

NOTICE

This approval is limited to the requirements of Title 30-A M.R.S.A. Section 4401, et seq., and Chapter 5 of the Jay Environmental Control and Improvement Ordinance and the Jay Subdivision Permit recorded herewith. Roads and public open spaces shown on the Final Plan may only be accepted by a vote of the Town of Jay. This approval does not indicate compliance with any other federal, or state statutes or local ordinances.

The above Title Block and notice shall appear on all plans submitted for review and formal approval by the Board.

- o. A reference to the book and page of the Board order approving the subdivision recorded in the Franklin County Registry of Deeds. The reference shall be similar to the following form:

See Town of Jay Planning Board Findings Recorded in the Franklin County Registry of Deeds in Book _____ , Page _____

C. Upon approval of the Final Plan by the Board, the Board shall sign the original and three copies. The applicant shall have the original Final Plan and the Board Order approving the plan recorded in the Franklin County Registry of Deeds within ninety (90) days of approval. One signed copy shall be given to the applicant and two signed copies shall remain with the Board as part of its permanent records. The applicant shall notify the Board within ten (10) days after the recording in the Franklin County Registry of Deeds of the following: the Book and Page where the Board order is recorded, and the plan number where the Final Plan is recorded.

D. In the event that the Final Plan and the Board order are not recorded in the Registry of Deeds within ninety (90) days after the date of their signing, the approval shall automatically be void.

E. In the event the applicant fails to comply with any provision of Subsection C above, the

Board may revoke its approval of the Final Plan by filing a notice of such revocation in the Franklin County Registry of Deeds. Not less than thirty (30) days prior to filing such notice of revocation, the Board must provide an applicant with written notice of the Board's intention to file such notice of revocation.

§5-306 CONDITIONS OF JAY SUBDIVISION PERMIT

A. The Board may impose any appropriate and reasonable conditions to insure compliance with this Chapter. However, every Jay Subdivision Permit shall be subject to the following standard conditions and conditions of Chapter 3.

1. Employees and authorized representatives of the Town of Jay shall be allowed access to the premises of the permit holder during normal business and operating times and at such other times as the Board deems necessary to perform such tests and inspections and examine all records relating to the subdivision.

2. The granting of the Jay Subdivision Permit is 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 these plans, proposals, and supporting documents is subject to review and approval prior to implementation.

3. Further division of approved lots by the applicant or future owners is specifically prohibited without prior approval of the board, and the applicant shall include deed restrictions to that effect.

4. Subdivision Plan Revisions After Approval under this Ordinance or a previous ordinance: No changes, erasures, modifications or revisions including further division of approved lots by the applicant or future owners shall be made to any subdivision plan approved under a previous Jay ordinance or to a Final Plan after Final Plan approval has been granted by the Board pursuant to subsection 5-305 hereof, unless the plan is resubmitted to the Board and the Board approves such modification. In the event that a plan is recorded without complying with this requirements, the plan shall be considered null and void.

Any application for subdivision approval which constitutes a revision or amendment to a subdivision plan which has been previously approved shall indicate that fact on the application and shall identify the original subdivision plan being revised or amended, including a reference to the book and page on which the original plan is recorded.

5. Each approved lot shall have not more than one dwelling unit unless otherwise approved by the Board.

6. The applicant shall secure and comply with all applicable federal, state, and Jay licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.

7. The applicant shall submit all reports and information requested by the Board demonstrating that the applicant has complied with or will comply with all terms and conditions of the Jay Subdivision Permit. All preconstruction terms and conditions must be met before construction begins.

8. The approval by the Board of the Final Plan shall not be deemed to constitute or be evidence of any acceptance by Jay of any street, easement, or other open space shown on such Final Plan. When a park, playground, or other recreation area shall have been shown on the Final Plan to be dedicated to Jay, approval of the Final Plan shall not constitute an acceptance by Jay of such areas. The Board shall require the Final Plan to contain appropriate notes to this effect.
9. If, upon inspection, any of the required Subdivision Permit conditions have not been completed in accordance with the plans and specification filed by the Permit holder, the Board shall take such steps as are necessary to enforce such Permit and the provisions of this Chapter.
10. The permit holder shall be required to maintain all subdivision improvements and shall provide for snow removal on all streets and sidewalks of the subdivision until acceptance of such streets by the Town of Jay.
11. Any applicant issued a permit pursuant to this Chapter in the direct watershed of North, Parker, Pease, Robinson or Wilson Ponds shall have a copy of the permit on site while work authorized by the permit is being conducted.
12. Failure to commence substantial construction of the required infrastructure improvements for the subdivision within two years of the date of approval and signing of the Plan shall render the Plan null and void. A statement of this effect must appear on any final plan. Upon good cause shown, the Board may extend the approval for additional two year periods. The extension request must be made to the Board at least thirty days prior to the time of expiration. 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.

PART 4

GENERAL DESIGN GUIDELINES AND REQUIREMENT

Section

§5-401 General Design

Guidelines

§5-402 Requirements

§5-401 GENERAL DESIGN GUIDELINES

A. General Design Guidelines: The Board shall consider the following general design guidelines before granting approval of a subdivision permit application:

1. Public Water and Sewer: Where available all subdivisions shall be served by public water and sewer.

2. Buffer Strip: The Board may require a buffer strip consisting of such elements as natural vegetation, where the Board finds a buffer strip to the subdivision desirable. The Board will consider the following in establishing buffer strips.

a. Plant materials shall be a least four feet in height and be of such evergreen species that will produce ultimately a dense audio/visual screen at least eight feet in height. Alternatively, a six-foot high wooden fence, without openings wider than 1", may be substituted.

b. The buffer will be maintained permanently, and any plant material which does not live shall be replaced within one year.

c. The plantings of the buffer shall be so placed that at maturity it will be no closer than three feet from any street or property line.

d. The buffer will be broken only at points of vehicular/ pedestrian access. When the buffer is broken by pedestrian access it shall be designed to not allow direct visual access to the adjacent property.

3. Lots: Each lot in any subdivision other than a Mobile Home Park shall comply with the provisions of the minimum lot size law, Title 12 M.R.S.A. Section 4807 et seq. and with the following dimensional requirements:

a. Private septic: The minimum lot size is 40,000 square feet except for any Multiple Unit Housing, for which the minimum lot size is 20,000 square feet per dwelling unit.

b. Town Sewer: The minimum lot size is 15,000 square feet except for any Multiple Unit Housing, for which the minimum lot size is 7,500 square feet per dwelling unit.

c. Private septic: A minimum of 150 feet road frontage per lot. Town sewer: A minimum of 100 feet road frontage per lot. Road frontage shall be on a public way established by or maintained under public authority or a private right of way, the description of which is recorded

in the Franklin County Registry of Deeds.

d. Lots may be laid out on turn-arounds or cul-de-sacs with a minimum 60 feet radius. Such lots shall have a 78 feet minimum chord distance on the road.

Each lot in any Mobile Home Park subdivision shall comply with the provisions of Title 30-A M.R.S.A. Section 4358, sub. 3, and the following dimensional requirements:

a. The size of any mobile home park lot served by a public sewer system shall be a minimum of 6,500 square feet.

b. The size of any mobile home park lot with on-site subsurface waste water disposal shall be a minimum of 20,000 square feet.

c. The size of any mobile home park lot served by a central on-site subsurface waste water disposal system approved by the Department of Health and Human Services shall be a minimum of 12,000 square feet. The overall density of a mobile home park served by a central on-site subsurface waste water disposal system shall not be more than one home for every 20,000 square feet.

4. Stormwater-Management

a. Adequate provision shall be made for disposal of all stormwater generated within the subdivision and for any drained groundwater through a management system of ditches, swales, culverts, underdrains, and/or storm drains. The stormwater- management system shall be designed to conduct stormwater flows to existing watercourses or storm drains. All components of the stormwater-management system shall be designed to meet the criteria of a twenty-five-(25) year storm.

b. The stormwater 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 twenty-five (25) percent for potential increase 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 nor cause downstream erosion. The subdivider shall be responsible for financing any improvements to existing drainage systems required to handle the increased storm flows.

d. Wherever the storm-drainage system is not within the right-of-way of a public street, perpetual easements shall be provided to the town allowing maintenance and improvement of the system.

e. Where soils require a subsurface drainage system, the drains shall be installed and maintained separately from the stormwater-drainage system.

5. Erosion and Sedimentation Control: Erosion soil and sedimentation of watercourse and water bodies shall be minimized. The following measures shall be included, where applicable, as part of subdivision review and approval.

a. Stripping of vegetation, regrading or other development shall be done in such a way as to minimize erosion.

- b. Development shall keep cut-fill operations to a minimum and ensure conformity with topography so as to create the least erosion potential and so as to adequately handle surface water runoff.
- c. The disturbed area and the duration of exposure of the disturbed area shall be kept to practical minimum.
- d. Disturbed soils shall be stabilized as quickly as practical. Temporary mulch will be placed on all disturbed areas where seeding or other construction or stabilization activities will not take place for over 14 consecutive days.
- e. Temporary vegetation or mulching shall be used to protect exposed critical areas during development.
- f. The permanent (final) vegetation and structural erosion control measure shall be installed in the time periods contained in the erosion and sediment control plan.
- g. Until the disturbed area is stabilized, sediment in the runoff water shall be trapped by the use of debris basins, sediment basins, silt traps or other acceptable methods.
- h. Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the developer causing such sedimentation to remove it from all adjoining surfaces, drainage systems and watercourses and to repair any damage at his expense.
- i. Maintenance of drainage facilities or watercourses originating and completely on private property is the responsibility of the owner to the point of open discharge at the property line or at a communal watercourse within the property.
- j. The standards set forth in the Maine Erosion and Sediment Control Handbook for Construction, Best Management Practices (March 1991 and as amended) shall be employed.

6. Streets and Roads: The design and construction of all Proposed Town Ways shall be in accordance with the provisions of the Town of Jay, Maine — Town Way Ordinance. Private Roads proposed within a subdivision shall provide for, at a minimum, a Road Association comprised of property owners within the proposed subdivision. The applicant shall submit to the Planning Board for approval any of the following documents demonstrating at a minimum that the Road Association has the powers and duties to levy assessments upon its members to pay for Private Road repair, replacement and maintenance (including snow plowing); the Declaration establishing a lien process, Road Association's Articles of Incorporation, its organizing documents, its Bylaws, and/or its Operating Agreement.

The following words shall appear on any proposed subdivision plan containing a Private Road:

"All roads shall remain private, to be maintained by the developer or the lot owners and shall not be accepted or maintained by the Town of Jay until they meet the provisions of the Town Way Ordinance and are accepted by an affirmative vote at a Town meeting."

7. Groundwater Protection: The Board may impose, as a condition of subdivision approval, reasonable conditions to ensure that the proposed subdivision does not have an adverse effect on ground water quality. When appropriate, the Board may require that a subdivision ground water monitoring program be established by applicant and that regular reports be filed with the Town of

Jay at designated intervals.

8. Phosphorous Export:

a. Phosphorous export from a proposed subdivision development shall be calculated according to the procedures defined in *Phosphorous Control in Lake Watersheds: A Technical Guide for Evaluating New Development* (Maine DEP et. al., September 1989 with revision in 1992 and as may be amended). Projects proposed within the direct watershed of a pond listed below shall be designed to limit phosphorous runoff to the levels defined below. Upon request, copies of all worksheets and calculations shall be made available to the Board.

Lake Name	Protection Level	Lake Load Allocation (lbs/acre/yr) ¹
North Pond	Medium	0.050
Parker Pond	Medium	0.036
Pease Pond	Medium	0.040
Robinson Pond	Medium	0.044
Wilson Pond	Medium	0.038
Unnamed Pond (8789)	Medium	0.047
Unnamed Pond (8801)	Medium	0.044

Source: Maine Department of Environmental Protection November 8, 2010

¹Lake Watershed Load Allocation represents pounds (lbs) phosphorus per acre per year allocated to Jay's share of watershed per parts per billion (ppb).

b. Phosphorous-control measure shall meet the design criteria contained in *Phosphorous Control in Lake Watersheds: A Technical Guide for Evaluating New Development* (Maine DEP et. al., September 1989 with revision in 1992 and as may be amended). The Board shall require the reasonable use of vegetative buffers, limits on clearing, and minimal road lengths and shall encourage the use of other nonstructural measures prior to allowing the use of high-maintenance structural measures such as infiltration systems and wet ponds. Where buffers can be designed and maintained to remove 75% of the phosphorus in accordance with Table 6.1 of Stormwater Management for Maine: Best Management Practices, it will be assumed that the project meets this standard.

8. Protection of Significant Wildlife Habitat: Applicants proposing to subdivide land in or within seventy-five (75) feet of significant wildlife resources identified by the Maine Department of Inland Fisheries and Wildlife shall consult with a recognized wildlife or fisheries consultant or the Maine Department of Inland Fisheries and Wildlife and provide their written comments to the Board. The Board shall consider any recommended measures provided to minimize impacts on such habitats. Any conditions to the approval to wildlife or fisheries habitat preservation shall appear on the plan and as deed restrictions to the affected lots.

§5-402 REQUIREMENTS

A. Conformance with Other Laws, Regulations: The proposed subdivision shall be in conformance with all applicable Jay, state and federal ordinances, statutes, and regulations. If the proposed subdivision meets the definition of a subdivision as defined in the Site Location Act, Title 38 M.R.S.A., Section 482, as amended, the applicant must secure the approval of the M.D.E.P. and the Board prior to any construction activity constituting a division of the tract or structure.

B. Phasing of Development: At the time the Board grants Final Plan approval, it may require the Plan to be divided into two or more sections subject to any conditions the Board deems necessary when it determines that police, fire and/or capacity will be exceeded.

C. Performance Bonds and Letters of Credit:

1. Prior to approval of the subdivision, the Board may require an applicant to file a performance guarantee with the Board in an amount sufficient to defray all costs and expenses of the proposed public improvements resulting from the subdivision. Such performance guarantee may be tendered in the form of a certified check payable to the Town of Jay, or a letter of credit payable to the Town of Jay or a performance bond running to the Town of Jay and issued by a surety company acceptable to the Town of Jay. The conditions and amount of such certified check, letter of credit or performance bond shall be established by the Board and which shall be in an amount not less than the total cost of furnishing, installing, connecting and otherwise completing all of the necessary street grading, paving, storm drainage, and utilities, including other infrastructure improvements specified on the Final Plan.

2. The Board may grant an extension of not greater than twelve (12) months to the guaranteed performance period upon petition from the applicant demonstrating good cause for such extension. The extension request must be made to the Board at least thirty days prior to the time of expiration.

3. Before an applicant may be released from its guarantee of performance as provided hereunder, the Board shall require certification from the municipal officers with jurisdiction over any aspect of the applicant's infrastructure improvements, that all improvements have been completed in accordance with all applicable standards (including state, federal and Jay codes, ordinances, laws and regulations).

4. The Board may, at its discretion, waive the requirement of a performance guarantee provided that no lot in the subdivision may be sold until it shall have been certified, in the manner set forth in Subsection 3 above, that all infrastructure improvements have been made. The Board, in consultation with the applicant, shall set a reasonable completion date for the improvements, and the subdivision approval shall be voided if such improvements are not completed within the specified time. The Board may, upon request from the applicant, extend the completion date as provided in subsection 2 above. The Board shall have the discretion of withholding approval of the Final Plan until all improvements are completed in accordance with subsection 3 above.

PART 5

APPROVAL-STANDARDS

Section

§5-501 Standards

§5-501 STANDARDS

The Board shall approve, deny, or approve with conditions, all applications for subdivisions in accordance with the provisions of this chapter. After submission of a completed application, the Board shall approve an application or approve it with conditions if the Board makes a positive finding based on the following criteria:

A. Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:

1. The elevation of the land above sea level and its relation to the flood plains;
2. The nature of soils and subsoils and their ability to adequately support waste disposal;
3. The slope of the land and its effect on effluents;
4. The availability of streams for disposal of effluents; and
5. The applicable state and local health and water resource rules and regulations;

B. Sufficient water. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;

C. Municipal water supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;

D. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

E. Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of an urban compact municipality as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section;

F. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;

G. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;

H. Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the Town of Jay, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline; In making this determination the Board shall consider.

1. Maps and information provided by the Maine Historic Preservation Commission
2. Maps and information provided by the Maine Beginning with Habitat program into their review process.

I. Conformity with local ordinances and plans. The proposed subdivision conforms with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the Board may interpret these ordinances and plans;

J. Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section;

K. Surface waters. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

L. Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;

M. Flood areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;

N. Freshwater wetlands. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;

O. River, stream or brook. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9;

P. Storm water. The proposed subdivision will provide for adequate storm water management;

Q. Spaghetti-lots prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or wetland as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;

R. Lake phosphorus concentration. The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision;

S. Impact on adjoining municipality. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located; and

T. Lands subject to liquidation harvesting. Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, Board must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. The Board may request technical assistance from the Department of Conservation, Bureau of Forestry to determine whether a rule violation has occurred, or the Board may accept a determination certified by a forester licensed pursuant to Title 32, chapter 76. If the Board requests technical assistance from the bureau, the bureau shall respond within 5 working days regarding its ability to provide assistance. If the bureau agrees to provide assistance, it shall make a finding and determination as to whether a rule violation has occurred. The bureau shall provide a written copy of its finding and determination to the Board within 30 days of receipt of the Board's request. If the bureau notifies the Board that the bureau will not provide assistance, the Board may require a subdivision applicant to provide a determination certified by a licensed forester.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in Title 12, section 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership.

T. Farmland. All farmland within the proposed subdivision has been identified on maps submitted as part of the application. Any mapping of farmland may be done with the help of the local soil and water conservation district.

PART 6

APPEALS, VIOLATIONS, PENALTIES AND WAIVERS

§5-601 Appeals

§5-602 Violations and Penalties

§5-603 Waivers

§5-601 APPEALS

Any aggrieved party may appeal a decision of the Board with respect to the issuance of a Jay Subdivision Permit in accordance with the procedures outlined in Chapter 3 of this Ordinance.

§5-602 VIOLATIONS AND PENALTIES

Any violation of this Chapter shall be subject to penalties in accordance with Chapter 4B of this Ordinance.

§5-603 WAIVERS

Where the Board makes written findings of fact that extraordinary and unnecessary hardships may result to an applicant from strict compliance with this Chapter or that there are special circumstances of a particular tract or parcel of land or structure proposed to be subdivided, it may waive portions of the General Guidelines and Requirements, Submissions Requirements or the Standards of this Chapter in order to permit a subdivision, provided that the public health, safety, and welfare are protected, and provided that the waivers do not have the general effect of nullifying the intent and purpose of this Chapter. In granting waivers, the Board shall require such conditions consistent with the objectives of this Chapter. In accordance with 30-A M.R.S.A. Section 4406(1)(B), any such waiver shall be noted on the Final Plan.

CHAPTER 9

SOLID WASTE-- FACILITIES

Part

1. Declaration of Intent and Objectives
2. Short Title and Definitions
3. Prohibitions, Exemptions, Modifications and Saving Clause
4. Jay Solid Waste Facility Permit and Wood Waste Facility Permit
5. Standards
6. Construction and Operations
7. Closure
8. Post-Closure Monitoring and Maintenance

PART 1

DECLARATION OF INTENT AND OBJECTIVES

Section

§9-101 Declaration of Intent and Objectives

§9-101 DECLARATION OF INTENT AND OBJECTIVES

- A. By and through this Chapter, the Town of Jay declares its intent and objective to establish rules governing the disposal of solid waste in a manner that does not pollute any water, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance.
- B. By and through this Chapter, the Town of Jay declares its intent and objective to be as consistent as possible with all applicable federal and state laws governing the disposal of solid waste. Laws that may apply include but are not limited to, Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. §1301-1319 ("ME Statutes"); Maine Department of Environmental Protection Solid Waste Management Rules (ME Rules) Chapter 400, 401, and 405; Solid Waste Disposal Act, 42. U.S.C.A. Section 6901 et seq., including the Resource Conservation and Recovery Act of 1976; The Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, et. seq; the Clean Air Act, 42 U.S.C.A. Section 7401 et. Seq. ("Fed. Statutes") and rules promulgated pursuant to these Acts, including but not limited to 40 CFR 240-258 ("Fed. Rules"). Jay recognizes that provisions of these statutes and the rules promulgated pursuant to them may conflict. Jay resolves the conflict by adopting provisions that are as consistent as possible with the applicable state or federal provision and the mandate to prevent water pollution, air contamination, health and welfare hazards, and nuisances. In addition, this Chapter contains standards that Jay finds reasonable, including, without limitation, standards in conformance with federal and state solid waste rules; and standards concerning traffic safety; levels of noise heard outside the facility, distance from residential,

CHAPTER 9

commercial or institutional uses, groundwater protection, surface water protection, beneficial use of secondary solid waste materials, erosion and sedimentation control, and compatibility of the solid waste facility with local zoning and land use controls. These standards, and those adopted governing the hydrogeological criteria for siting and design of solid waste disposal facilities and engineering criteria related to waste handling and disposal areas, are not more strict than those contained in ME statutes, including 38 M.R.S.A. §480-A et seq. and 481 et seq., and the rules adopted and consistent with these statutes. See 38 M.R.S.A. §1310-U. Jay is committed to preventing the degradation or destruction of natural resources, minimizing the adverse impact of a solid waste facility on the natural environment and protecting the health, safety and general welfare of all people. See 38 M.R.S.A. §480-A and §481.

C. This Ordinance shall be interpreted to effectuate these intents and objectives.

Twenty-First, Sec. 20.

PART 2

SHORT TITLE AND DEFINITIONS

Section

§9-201 Short Title

§9-202 Definitions

§9-201 SHORT TITLE

This Chapter shall be known and may be cited as “**Jay Environmental Control and Improvement Ordinance, Solid Waste Facilities.**”

§9-202 DEFINITIONS

- A. For the purposes of this Chapter, the terms and definitions set forth in ME Rules Chapter 400, Sections 1.A-through L.L.II are hereby adopted and incorporated herein by reference except those terms specifically not adopted in this section and those terms defined in § 9-202(B) and § 1-201. The references ME Rules Chapter 419 in ME Rules Chapter 400, Sections 1.B I.D shall not be adopted or incorporated herein by reference. The following definitions in ME Rules Chapter 400 are not be adopted or incorporated herein by reference; Paragraphs H., I., P., U., A.A., F.F., H.H., L.L., O.O., Q.Q., U.U., V.V., W.W., P.P.P., Q.Q.Q., C.c., U.u., Z.z., M.m.m., P.p.p., Q.q.q. and J.J.j.j. The term “ME Rules” used throughout this document shall mean ME Dept. of Envntl Prot. Maine Solid Waste Management Rules Chapter 400, and Chapter 401, as amended November 2, 1998 and amended September 6, 1999 and Chapter 405 repealed and replaced November 2, 1998 and amended September 6, 1999.
- B. In addition to the general definitions contained in § 1-201 for purposes of this Chapter, the following terms shall have the following meaning, unless the context indicates otherwise.

1. **Alter.** "Alter" means to change the capacity, horizontal or vertical boundaries, siting, design, construction or operation of a solid waste facility or activity in any way from that previously approved by the Department.
2. **Amendment.** "Amendment" means a modification to a license that would permit a solid waste facility to increase capacity of the solid waste facility; alter the horizontal and vertical boundaries, siting, design, construction or operation of the solid waste facility; or alter the nature of an activity to an extent that would require the Department to modify any findings with respect to any of the licensing criteria. Amendments do not include minor revisions and other alterations.
3. **Assessment Monitoring.** "Assessment monitoring" means monitoring conducted to verify water quality and/or to assess the nature and extent of a release of contaminants to ground or surface water or air.
4. **Buffer Strip.** "Buffer strip" means an area of land that is covered by vegetation, capable of regeneration and succession, retained as undisturbed vegetation. A buffer strip runs along the border between the solid waste facility site and an adjacent piece of land, body of water, or other specified area and serves to protect that area from adverse effects of the solid waste facility or preserves some existing quality or use in the area of development.
5. **Commercial Solid Waste Landfill.** "Commercial solid waste landfill" means a privately owned solid waste facility that accepts waste from another for consideration and is used for the management of solid waste generated by persons who do not own or operate the solid waste facility. The term does not include a solid waste facility owned, controlled, operated or used exclusively by:
 - a. A public solid waste disposal corporation under section 1304-B, subsection 5;
 - b. A municipality under section 1305;
 - c. A refuse disposal district under Chapter 17;
 - d. The agency under Chapter 24;
 - e. The person generating the solid waste disposed of at the solid waste facility, except that the solid waste facility may accept, on a nonprofit basis, no more than 15% of all solid waste accepted on an annual average that is not generated by the owner. A solid waste facility receiving ash resulting from the combustion of municipal solid waste or refuse-derived fuel is not exempt from this subsection solely by operation of this paragraph; or
 - f. A private corporation that accepts material-separated refuse-derived fuel as a supplement fuel and does not otherwise burn waste other than its own.
6. **Construction and Demolition Debris.** "Construction and demolition debris" means debris resulting from construction, remodeling, repair, and demolition of structures. It excludes asbestos and other special wastes.

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- 7. Contamination.** As applied to ground water and surface water, "contamination" means exceeding water quality standards specified in:

 - a. Primary Drinking Water Standards adopted under Title 22 Section 2611;
 - b. Maximum Exposure Guidelines adopted by the State of Maine;
 - c. A statistically significant increase or change in concentration of measured parameters above established background or baseline, whether or not the existing concentration already exceeds the maximum concentration levels specified above, using the 95% Confidence Interval when the student's t test is applied. The use of other statistical tests and confidence intervals shall be approved by the Board.
- 8. Department.** "Department" means the Maine Department of Environmental Protection.
- 9. Detection Monitoring.** "Detection monitoring" means monitoring conducted periodically throughout the active life of the solid waste facility, and through the closure and post-closure periods, to detect changes in air and water quality. Significant changes in air or water quality may trigger assessment monitoring as required by the Board.
- 10. Disposal.** "Disposal", means the discharge, deposit, dumping, incineration, spilling, leaking, or placing of any hazardous, biomedical or solid waste, waste oil, refuse derived fuel, sludge or septage into or on any land, air or water so that the hazardous, biomedical or solid waste, waste oil, refuse derived fuel, sludge or septage or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters.
- 11. Environmental Monitoring.** "Environmental monitoring" means collecting and analyzing ground and surface water samples, leachate, leak detection and leachate treatment residue samples, air samples, solid waste landfill gas samples and/or measurements, waste characterization, monitoring of solid waste settlement and slope stability, monitoring solid waste landfill for erosion, vegetative stress and storm water runoff/runoff.
- 12. Existing hourly sound level.** "Existing hourly sound level" means the hourly sound level at a solid waste facility, at protected locations, at a specific location or at an abutting property line prior to the first expansion of that solid waste facility.
- 13. Expand.** "Expand" means to dispose of solid waste beyond the horizontal and vertical boundaries and volumes previously licensed by the Board for solid waste disposal, except when allowed as part of a Board approved closure activity. "Expand", as it applies to solid waste incineration facilities, means to significantly increase the licensed disposal capacity of the solid waste facility.
- 14. Friable Asbestos.** "Friable asbestos" means any material containing more than one percent (1%) asbestos by weight that hand pressure can crumble, pulverize or reduce to powder when dry. It shall also include non-friable asbestos that has been crushed, crumbled, pulverized or reduced to powder by any means during the course of dismantling, handling, or transporting the non-friable waste.

- 15. Inert fill.** "Inert fill" means clean soil material, including soil from road ditching; rock; bricks; crushed clean glass or porcelain; and cured concrete; that are not mixed with other solid or liquid waste, and are not derived from an ore mining activity or winter sand cleanup.
- 16. License.** "License" shall have the same definition as "Permit".
- 17. MBEP.** "MBEP" means the Maine Board of Environmental Protection.
- 18. Multifuel Ash.** "Multifuel Ash" is ash generated from combustion of the following fuels: wood, paper, pulp and paper sludge, coal, oil and tire chips
- 19. Non-friable asbestos.** "Non-friable asbestos" means any material containing more than one percent (1%) asbestos by weight that, when dry, cannot be crumbled, pulverized or reduced to powder by hand pressure, or which has not been crumbled, pulverized or reduced to powder by any means.
- 20. Ordinance.** "Ordinance shall mean the Jay Environmental Control and Improvement Ordinance".
- 21. Pollutant.** "Pollutant" means dredged spoils, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic commercial or agricultural wastes of any kind, or any constituent thereof.
- 22. Receptor.** "Receptor" shall mean any land area, surface water, ground water, person or persons, natural environment, air mass, or natural resources or combination thereof that can be impacted by contamination from a solid waste facility.
- 23. Sand and gravel deposit.** "Sand and gravel deposit" means a surficial geological formation such as an esker, outwash plain, glaciomarine delta, kame, stratified moraine or other stratified deposits commonly consisting of sand and/or gravel.
- 24. Secondary Material.** "Secondary material" means a solid waste, separated from other solid wastes that may be suitable for beneficial uses. The secondary material may be a product having a solid waste as a constituent.
- 25. Solid waste landfill or landfill.** "Solid waste landfill or landfill" means a discrete area of land or an excavation used for the permanent disposal of solid waste. This term does not include land application sites used in programs approved by the Department.
- 26. Special waste.** "Special waste" means any solid waste generated by sources other than domestic and typical commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to:
- a. Oil, coal, wood and multi-fuel boiler and incinerator ash;

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- b. Industrial and industrial process waste;
- c. Waste water treatment plant sludge, paper mill sludge and other sludge waste;
- d. Debris and residuals from non-hazardous chemical spills and cleanup of those spills;
- e. Contaminated soils and dredge materials;
- f. Asbestos and asbestos-containing waste;
- g. Sand blast grit and non-liquid paint waste;
- h. High and low pH waste;
- i. Spent filter media residue; and
- j. Shredder residue and other waste designated by the Board, by rule,

27. Successful corrective action. "Successful corrective action" means that, at a solid waste facility which has previously been found to be contaminating waters of the State, the owner or operator has developed and implemented a Corrective Action Plan and Corrective Action Monitoring Program at that solid waste facility and the Board has found that:

- a. The owner/operator has stopped, contained and eliminated the discharge of contaminants attributable to the solid waste facility;
- b. The owner/operator has modified the solid waste facility's detection monitoring program to include all parameters detected during assessment monitoring to monitor ground water not captured by the corrective action;
- c. The owner/operator is monitoring the hydraulic conditions and capture of contaminants that will allow ground water quality downgradient of the corrective action to improve;
- d. The owner/operator has documented an actual trend of improving water quality in previously contaminated waters and has demonstrated that the trend will continue. The demonstration must be supported by the use of modeling and corrective actions in conjunction with hydrogeologic data showing capture of the plume, diversion of flow paths and/or reversal of flow paths; and
- e. Contaminants previously released from the solid waste facility are mitigated and do not pose a threat to public health, safety and the environment.

28. Water Quality Deterioration. "Water Quality Deterioration" shall mean a change in water quality data results that appear significant after considering historical variations and any acute events that might have triggered a long term or short-term water quality change.

29. Wood Waste. “Wood Waste” means brush, stumps, lumber, bark, woodchips, shavings, slabs, edgings, slash and sawdust, which are not mixed with other solid or liquid waste, but does not include flume grit.

C. For all provisions of the Ordinance, including those provisions incorporated by reference from the ME Rules, Chapter 400, 401 and 405 the definitions contained in this Section and § 1-201 shall apply.

Twenty-First, Sec. 21. Twenty-Second, Sec. 36.

PART 3
PROHIBITIONS, EXEMPTIONS, MODIFICATIONS AND SAVING
CLAUSE

Section

- §9-301 General Prohibitions
- §9-302 Exemptions
- §9-303 Modifications
- §9-304 Adoption by Reference
- §9-305 Savings Clause

§9-301 GENERAL PROHIBITIONS

- A. No person may operate any solid waste facility in a manner contrary to this Ordinance or without a permit issued by the Board pursuant to this Ordinance.
- B. No person may locate, establish, construct, alter or operate a new solid waste facility, or alter or expand the disposal capacity of an existing solid waste facility without a permit issued by the Board pursuant to this Ordinance. Except as specified in the Jay Solid Waste Facility Permit, the provisions of the permit shall apply to the entire solid waste facility, both existing and proposed.
- C. Notwithstanding the prohibitions in subsections A and B above, this Chapter does not regulate the disposal of hazardous waste as defined in 38 M.R.S.A. Section 1303-C.15 or the disposal of biomedical waste as defined in 38 M.R.S.A. Section 1303-C.1.a.
- D. No person may locate, establish, construct, expand or operate a wood waste facility without a permit issued by the Board pursuant to this Ordinance.
- E. No person may construct or close a facility using beneficial use secondary materials without a permit issued by the Board pursuant to this Ordinance.

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§9-302 EXEMPTIONS

A. This Chapter applies to facilities subject to ME Rules Chapter 400, 401 and 405 except that the disposal of cull potatoes is exempt and shall not be adopted or incorporated herein by reference.

B. As provided in 38 M.R.S.A. 2173 and notwithstanding any other provision of this Ordinance, Jay Solid Waste Facility permit issued to a solid waste facility owned by the former Maine Waste Management Agency, the State Planning Office or a regional association as defined in 38 M.R.S.A. 1303-C.24. shall contain the same findings, conclusions, and conditions contained in the license issued by the Department. A Jay Solid Waste Facility permit may also contain additional conditions for the operation of such a solid waste facility relating to issues not specifically addressed in any condition of the Department's license, provided the additional conditions do not unreasonably restrict the operation of the solid waste facility and the conditions are attached to a Jay Solid Waste Facility permit within 90 days of issuance of the Department's license or within 30 days of a final decision by the Department to relicense the solid waste facility.

§9-303 MODIFICATIONS

A. The rules of this Chapter apply only to solid waste facilities subject ME Rules Chapter 400 except that Section 2.C. through Section 2.I., inclusive, Section 3.A., Section 3.B.(1)(b), Section 3.B.(1)(c), Section 3.B.(3), Section 3.D. through Section 3.F. inclusive, Section 4.E.(2)(a)(iii), Section 7, Section 8, Section 10, Section 12.B, Section 13, Appendix B and Appendix C of Chapter 400 shall not be adopted or incorporated herein by reference.

B. The rules of this Chapter apply only to solid waste facilities subject to ME Rules Chapter 401 except that Section 1.C.(1)(c), Section 1.C.(1)(d), Section 2.D.(2), Section 4.A., Section 4.C.(10), Section 4.C.(13) through 4.C.(17) inclusive, Section 4.C.(21) Section 6.B.(1) through Section 6.B.(4), Section 6.B.(6) through Section 6.B.(9), Section 6.C., Section 6.D., Section 7.C. and Section 8 of Chapter 401 shall not be adopted or incorporated herein by reference.

C. The rules of this Chapter apply only to solid waste facilities subject to ME Rules Chapter 405 except that the disposal of cull potatoes is exempt from this Chapter and except that Section 2.C.(2)(d), Section 2.C.(2)(i), Section 2.C.(2)(j), Section 2.C.(3)(c), Section 2.D.(5), Section 4, and Section 6.C.(4)(f) of Chapter 405 shall not be adopted or incorporated herein by reference.

D. For the purposes of this Chapter, and in addition to other modifications contained in this Chapter and Ordinance, ME Rules Chapter 400, 401, 405 and 418 are modified as follows: :

1. Section 400.3

- a. Modify Section B(1)(a) by changing references " of Chapter 400 and the relevant solid waste disposal facility chapters (Chapters 401 through 419, inclusive)" to read "Chapter 3 and Chapter 9, Part 4 of the Ordinance".
- b. Modify Subsection B.(1)(a) by including the phrase "renewal license for solid waste facilities" in the second sentence after the phrase "expanded solid waste disposal facilities".

- c. Modify Subsection C.(6) by deleting the phrase "and must include the certification required in Chapter 2, Section 7.E."
- 2. Section 400.4
 - a. Modify Subsection A.(2) by deleting the reference "as provided in Chapter 2, Section 7.D."
 - b. Modify Section E. by deleting the words "adequately" and "adequate" in all parts of this Section.
 - c. Modify Sections E., F., G., H., I., J., K., L. and M. by deleting the words "unreasonable" and "unreasonably" in all parts of these Sections.
 - d. Modify Subsections F.(1), G.(1), H.(1)(a), H.(1)(b), H.(1)(c), H.(1)(d), I.(1), K.(1), K.(1)(a), K.(1)(b), K.(1)(c), and L.(1), by changing "may" to read "must" in all parts of these Subsections.
 - e. Modify Subsections M.(1), M.(1)(a) and M.(2)(b) by changing "may" to read "will" in all parts of these Subsections.
 - f. Modify Section F.(2) by changing the phrase "subsection 400.1" to read "§ 9-202 of the Ordinance".
 - g. Modify Subsection H.(1)(c) by changing the phrase "Chapter 502 of the Department Rules" to read "DEP's Chapter 502".
 - h. Modify Subsection H.(2)(a) by changing the phrase "Chapter 500" to read "DEP's Chapter 500".
 - 3. Section 400.11
 - a. Modify Section A.(1) by changing the phrase "Chapter 401, section7" to read "§ 9-408 of the Ordinance".
 - b. Modify Section A.(4)(d)(ii) by deleting the second sentence.
 - c. Modify Section B.(1) by changing the phrase "Chapter 401, section7" to read "§ 9-408 of the Ordinance".
 - d. Modify Section B.(4)(b) by deleting the second sentence.
 - 4. Section 401.1
 - a. Modify Section A. by deleting the reference "and permit by rule facilities disposing of cull potatoes", and the second last sentence in the second paragraph.
 - b. Modify Section A. by changing the reference "Chapter 400 and this Chapter" to read "Chapter 9, Part 4 of the Ordinance".
 - c. Modify Section A. second paragraph by deleting the second sentence .
 - d. Modify Section B. by deletion of the word "unreasonable" and inserting the word "a".
 - e. Modify Section C.(1) by changing the reference "Chapter 400, Section4" to read "§ 9-401.B of the Ordinance".
 - f. Modify Section C.(1)(a) by changing "may" to read "will".
 - g. Modify Section C.(2)(a), C.(2)(b), C.(2)(c), C.(2)(d), C.(3)(a), C.(3)(b), C.(3)(c), C.(3)(d), C.(3)(e) and C.(3)(f) by changing "must" or "may" to read "will".
 - h. Modify Section C.(3) by changing the reference "Chapter 400, Section13" to read "§ 9-403.F of the Ordinance".
 - i. Modify Section D.(5) by changing the reference "of Chapter 500" to read "of DEP's Chapter 500".
 - j. Modify Section C.(3)(c) by deleting the reference "(See Chapter 405 for detailed monitoring requirements.)".

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- k. Modify Section D.(1) by changing the reference "Chapter 405" to read "§ 9-602.S of the Ordinance".
 - l. Modify Section E., by deleting the last sentence.
5. Section 401.2
- a. Modify Section 401.2. by changing the first sentence in the first paragraph reference "Chapter 400 and this Chapter" to read "§ 9-401 and § 9-402 of the Ordinance".
 - b. Modify Section A.(1) by including "and setback distances" at the end of the first sentence and replacing the word "and" before the words "man-made features" with a comma.
 - c. Modify Section A.(2) to include "Aerial photograph coverage should match mapping".
 - d. Modify Section B.(2)(b) by changing the reference "Chapter 405" to read "§ 9-602S of the Ordinance".
 - e. Modify Section C.(2) by deleting the word "sensitive".
 - f. Modify Section C.(2) by deleting the phrase "for purposes of assessing the need for improvement allowances" and " the imported soils processed in conjunction with at least one of the improvement allowances in Table 1 [See Section2.D.(2)]".
 - g. Modify Section D. by changing the last sentence in the first paragraph reference "Chapter 400, Section13" to read "§ 9-403.F of the Ordinance".
 - h. Modify Section E. by changing the second sentence in the first paragraph reference "Chapter 400, Section13" to read "§ 9-403.F of the Ordinance".
 - i. Modify Section F.(5)(e)(iv) by changing the reference "Chapter 405" to read "§§ 9-602.J, K and S of the Ordinance".
 - j. Modify Section F.(9) by deleting the phrases "and Burn", "and/or a burn area for wood wastes and/or wood from construction/demolition debris as part of the solid waste disposal facility site," and "and burn".
 - k. Modify Section F.(9) by changing the reference "Chapter 402 section2 and 4" to read "Chapter 402, Sections2 and 4 of the Rules of the MBEP, as amended effective November 2, 1998 and September 6, 1999".
 - l. Modify Section F.(10)(b) by changing the reference "Chapter 405" to read "§9-403.C.2. of the Ordinance".
 - m. Modify Section F.(11) by changing the phrase "Chapter 400, section4.J" and "Chapter 400, Section 4.M" to read "§ 9-401.B. Section 4.J of this Chapter" and "§ 9-401.B. Section 4.M. of this Chapter" respectively.
 - n. Modify Section G. by deleting the word "an unreasonable" in the first paragraph, second and inserting the word "a".
 - o. Modify Section G. by deleting "engineered systems" in the first paragraph, first sentence and inserting "the solid waste boundary".
 - p. Modify Section G. by deleting the word "sensitive" before receptor(s) in all locations.
 - q. Modify Section G. by deleting the last sentence in the first paragraph.
 - r. Modify Section G.(1)(b) by deleting "engineered containment systems" and inserting "the solid waste boundary".
 - s. Modify Section K. by changing the reference "Chapter 405" and the phrase "Section 2 of Chapter 405" to read "§ 9-602.S.3" and read "§ 9-602.S. of the Ordinance", respectively.
 - t. Modify Section L. by changing the reference of "Section 4" to read "§ 9-602.A. of the Ordinance".
 - u. Modify Section L. by changing the reference "Section 4.A.(1)" to read "§ 9-602.L.1. of the Ordinance".
6. Section 401.4

- a. Modify Section C.(1)(b) by changing the reference "Chapter 400 of these Rules and Chapter 2 of the Department Rules" to read "Chapter 9, Part 4 of the Ordinance".
- b. Modify Section C.(1)(b)(v) by changing the reference "Chapter 405 Section 4" to read "§ 9-403.C.2".
- c. Modify Section C.(3) by changing the reference "of Chapter 402, Section 4.I" to read "of Chapter 402, Section 4.I of the Rules of the MBEP, as amended effective November 2, 1998 and September 6, 1999".
- d. Modify the NOTE: portion shown below Section C.(7) by changing the phrase "Chapter 400, section 1 of these Rules" to read "§ 9-202 of the Ordinance".
- e. Modify Section C.(9) by changing the first sentence reference "Chapter 400, Section 4.J." to read "§ 9-401.B Section 4.J. of this Chapter".
- f. Modify Section C.(9) by changing the second to the last sentence reference "Chapter 400, Section 4.M." to read "§ 9-401.B Section 4.M. of this Chapter".
- g. Modify Section C.(12)(a), (b), (c), (d), and (e) by deleting the phrase "is/are performing as designed" and inserting after "The" the phrase "integrity and performance of the".
- h. Modify Section C.(22) second paragraph by changing the phrase "subsections 1 through 21" to read "Subsections 1 through 9, 11, 12, 18, 19 and 20 as modified".
- i. Modify Section D. by changing the phrase "Chapter 400, section 3.E" to read "Chapter 3 of the Ordinance".
- j. Modify Section D.(3) last sentence by changing the reference "Chapter 400" to read "Chapter 9, Part 4 of the Ordinance".
- k. Modify Section D.(5) by changing the reference "Chapter 400, Section 11" to read "§ 9-701 of the Ordinance".

7. Section 401.5

- a. Modify the phrase in the first paragraph "Chapter 400" to read "Chapter 9, Part 4 of this Ordinance".
- b. Modify Section B.(2) by deleting the second paragraph in its entirety.
- c. Modify Section D. by changing the reference "Chapter 400, Sections 3, 4.B., 4.C., 4.J., and 4.M., 10 and 11" in the first paragraph to read "§ 9-401.B, 4.B., 4.C., 4.J., and 4.M.; § 9-406; § 9-602.S.4.; § 9-701 and § 9-801.A and 11".
- d. Modify Section D.(1)(a) by changing the reference "Section 6 of this Chapter" to read "§ 9-801 of the Ordinance".
- e. Modify Section E. by changing the references "Chapter 405" in the first and second paragraph to read "§ 9-602.S. of the Ordinance".
- f. Modify Section F.(6) by changing the reference "Section 6" to read "§ 9-801" of the Ordinance.
- g. Modify Section G. by deleting in the first paragraph the phrase "or through a request for a variance pursuant to the provisions of Chapter 400, Section 13" in its entirety.
- h. Modify Section G.(2)(g)(v) by deleting the second paragraph in its entirety.
- i. Modify Section H. by deleting the second sentence in the first paragraph in its entirety.
- j. Modify Section I.(7) by changing the references "Chapter 400, Section 4.J." and "of Chapter 400, Section 4.M" to read "§ 9-401.B., Section 4.J." and " of § 9-401.B., Section 4.M.", respectively.

8. Section 401.7

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- a. Modify Section B. by deleting the phrase "in addition to the facilities listed in Chapter 400, section 2".
 - b. Modify Section D.(1) by changing the phrase "Chapter 400, section 4" to read "§ 9-401.B. of the Ordinance".
 - c. Modify Section D.(2) first paragraph, Sections D.(2)(a), D.(2)(b), D.(2)(c), D.(2)(d), D(2)(e) and D(2)(f) by changing "must" or "may" to read "will".
 - d. Modify Section D.(2)(d) by changing the reference "Chapter 400" to read "§ 9-202 of the Ordinance".
 - e. Modify Section D.(3) by changing the reference "Chapter 400, section 13" to read "§ 9-403.F. of the Ordinance".
 - f. Modify Section D.(3)(a), D.(3)(b), D.(3)(c) and D.(3)(e) by changing "must" or "may" to read "will".
 - g. Modify Section D.(4), D.(4)(b), D.(4)(c), D.(4)(d), D.(5), D.(5)(a) and D.(5)(b) by changing "must" or "may" to read "will".
 - h. Modify Section D.(5) by changing the reference "Chapter 405" to read "§ 9-602.S.5. of the Ordinance".
 - i. Modify Section E. first paragraph by deleting the second last sentence in the first paragraph.
 - j. Modify Section F. by changing the reference of "Chapter 400" to read "Chapter 9, Part 4 of the Ordinance".
 - k. Modify Section F. by changing the references "Chapter 400, Sections 4.E., 4.G. and 4.K." to read "§ 9-401.B. of the Ordinance".
 - l. Modify Section F.(2)(e) by deleting the phrase "and Burn" and "and/or a burn area for wood wastes and/or wood from construction/demolition debris as part of the solid waste disposal facility site".
 - m. Modify Section F.(2)(e) by changing the phrase "Chapter 402 and Sections 2 and 4" to read "Chapter 402, Sections 2 and 4 of the Rules of the MBEP, as amended effective November 2, 1998 and September 6, 1999".
 - n. Modify Section F.(2)(f) by changing the phrase "Chapter 400, Section 4.J" and "Chapter 400, section 4.M" to read "§ 9-401.A Section 4.J." and read "§ 9-401.A Section 4.M." respectively.
 - o. Modify Section F.(2)(g) by changing the reference "Chapter 405" to read "§ 9-602.S.2. of the Ordinance".
 - p. Modify Section H.(3) by changing the phrase "Chapter 400, Section 9" to read "§ 9-602.E. of the Ordinance".
 - q. Modify Section H.(7) by changing the phrase "Chapter 400, Section 4.J." and "Chapter 400, Section 4.M." to read "§ 9-401.A. Section 4.J." and read "§ 9-401.A. Section 4.M." respectively.
 - r. Modify Section H.(19) by changing the reference "Chapter 402, Section 4.I." to read "Chapter 402 Section 4.I. of the Rules of the MBEP as amended effective November 2, 1998 and September 6, 1999".
 - s. Modify Section H.(21) by changing the reference "Chapter 400, Section 3.E." to read "Chapter 3 of the Ordinance".
 - t. Modify Section J.(8) by changing the reference "Chapter 400" to read "Chapter 9, Part 4 of this Ordinance".
9. Section 405.1
- a. Modify Section B.(1) by changing the reference "Chapter 401 Sections 1 through 7" to read "Chapter 9, Part 4 of this Ordinance".
 - b. Modify Sections B.(1) by deleting the second sentence.

10. Section 405.2

- a. Modify Section A.(2)(f)(iii) by changing the phrase "where possible" to read "as applicable".
- b. Modify Section A.(3)(a)(i) by changing the reference "Appendix 405.B" to read "§ 9-602.S of the Ordinance".
- c. Modify Section B. by deleting the word "classified" in the first sentence.
- d. Modify Section B.(2)(d) by changing the phrase "where possible" to read "as applicable".
- e. Modify all references in Section C. to the phrase "is found in Appendix 405" and Section C(1)(b) "for the Appendix 405.A. Column 2 parameter" to read "will be as approved by the Board" and "for the parameters approved by the Board," respectively.
- f. Modify Section C.(1)(b) by deleting the last sentence.
- g. Modify Section C.(2)(a) by changing the reference "listed in Column 1 of Appendix 405.A plus any Column 2" to read "approved by the Board plus any".
- h. Modify Section C.(2)(b) by changing the reference "listed in Appendix 405.A, Column 1 plus Column 2" to read "by the Board plus any".
- i. Modify Section C.(3)(d) by deleting "as defined in CMR 400, Section 1".
- j. Modify Section D. by deleting the phrase "including the two assessment monitoring events" in the first paragraph, second sentence.
- k. Modify Section D. by deleting the sentence "The corrective actions must be designed to minimize the discharge of pollutants from the solid waste disposal facility" in the first paragraph and insert the sentence "The corrective action must be designed to mitigate or eliminate the discharge of contaminants from the solid waste disposal facility".
- l. Modify Section D.(2) by deleting the word "reduce or".
- m. Modify Section D.(2) by deleting the phrase "to the maximum extent practicable, releases of Appendix 405.A. Column 3" in its entirety.
- n. Modify Section D.(2)(b) by deleting the word "protection" and inserting "mitigation".
- o. Modify Section D.(3)(a)(i) by deleting the phrase "reduce further" and insert "mitigate".
- p. Modify Section D.(3)(b) by deleting the sentence in its entirety and inserting "A schedule for implementation of the proposed Corrective Action Program".

11. Section 405.3

- a. Modify Section A.(5) by revising the word "fifth" to read "eighth".
- b. Modify Section B. by revising the reference "as Appendix 405.C" to read "in 40 CFR Part 258.53(h)".

12. Section 405.5

- a. Modify Section G.(2) by changing the phrase "of the Appendix 405.A Column 3 parameters" to read "of parameters approved by the Board".

13. Section 405.6

- a. Modify Section B.(1)(c) by changing the phrase "Appendix 405.E" to read "Appendix E".
- b. Modify Section C.(4)(a) by changing the reference "Section 6.B.(2)" to read "§ 9-602.S.8.a. and § 9-602.S.8.b. of the Ordinance".
- c. Modify Section D. by deleting the third sentence in its entirety.

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- d. Modify Section D.(2)(f) by deleting "in Chapter 419, Section 6.D.(1)" in its entirety in the first sentence.
 - e. Modify Section D.(2)(j) and Section D.(2)(l) by changing the reference "Appendix 405.D" to read "Appendix D".
 - f. Modify Section D.(2)(n) by changing the reference "Appendix 405.E" to read "Appendix E".
- E. If a conflict exists between an Ordinance provision and the ME Rules, Chapter 400, 401 or 405 the Ordinance prevails.

§9-304 ADOPTION BY REFERENCE

- A. To the extent practicable, and except as modified in this Ordinance, including Section 9-303, and except to the extent they are inconsistent with state and federal law, as authorized by 30-A M.R.S.A. §3003(2), ME Rules 400, 401 and 405 are specifically adopted and incorporated into this Chapter by reference. As used in this Chapter, any reference to the "Board", "Department" or "Commission" in any provision of the ME Rules adopted by reference herein shall mean the "Board" as defined in §1-201 of Chapter 1 of this Ordinance.

§9-305 SAVINGS CLAUSE

- A. In addition to and except as stated in §1-107 and 1 M.R.S.A. §302, any Permit issued pursuant to the repealed Chapter 9 shall remain in full force and effect subject to the law, including the Ordinance, that was in effect at the time of the issuance. In the event that a provision in this Ordinance, including this Chapter, conflicts with the ME Rules, the provisions of the Ordinance shall apply, consistent with §9-101.

PART 4

JAY SOLID WASTE FACILITY PERMIT AND WOOD WASTE FACILITY PERMIT

Section

- §9-401 Solid Waste Facility Permit Criteria
- §9-402 Application--General
- §9-403 Application--Specific
- §9-404 Conditions of Jay Solid Waste Facility Permit
- §9-406 Liability Insurance
- §9-408 Wood Waste Facility Criteria

§9-401 SOLID WASTE FACILITY PERMIT CRITERIA**A. General Permit Criteria .**

1. No person may locate, establish, construct, expand, or operate any solid waste facility or construct or close a solid waste facility using beneficial use secondary materials unless a permit is issued by the Board under provisions of this Chapter.
2. The Board shall not issue a permit unless it finds that the solid waste facility or the beneficial use secondary material construction activity will not pollute any water, contaminate the ambient air, constitute a hazard to health or welfare or create a nuisance.
3. The facility must satisfy all applicable requirements of this Chapter and the Ordinance.

B. Specific Solid Waste Facility Requirements. The permit criteria set forth in ME Rules Chapter 400, Section 4. , are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303 .

§9-402 APPLICATION--GENERAL

A. Application for a Jay Solid Waste Facility Permit shall be made in accordance with Chapter 3 of this Ordinance and contain such additional information relating to the solid waste landfill or beneficial use secondary material construction activities as required in this Part 4.

B. In addition to the information required in § 3-101 and § 9-403, persons applying for a Jay Solid Waste Facility Permit shall comply with the following:

1. The Applicant shall submit an original and four (4) copies of the application for a Jay Solid Waste Facility Permit on a form which shall be furnished by the Board.
2. The Applicant proposing to construct, alter or expand a solid waste facility or construct or close a solid waste facility using beneficial use secondary materials shall submit the following information on a form which shall be furnished by the Board:
 - a. Name and address of applicant.
 - b. Name and address of the owners of the site (if other than applicant).
 - c. If applicant is a corporation, state whether the corporation is authorized to do business in Maine, and attach a copy of a current Certificate of Good Standing from the Secretary of State of Maine.
 - d. Name of applicant's authorized representative.
 - e. Name, address and number of Registered Professional Engineer, or Land Surveyor and other professionals who aided in preparing the application.
 - f. Address to which all correspondence from the Board should be sent.

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- g. The nature of the applicant's real estate interest in the site (option, land purchase contract, recorded ownership, etc.) and a copy of the instrument creating the applicant's interest.
 - h. Name and mailing addresses of property owners abutting the site.
 - i. A narrative description of the beneficial use secondary material construction activity and operations if applicable. A detailed narrative description of the solid waste facility and its operation detail.
 - j. Accurate and complete cost estimates for the solid waste facility.
 - k. A letter from a financial institution, governmental agency, or other funding agency indicating a commitment to provide a specified amount of funds and the uses for which the funds may be utilized.
 - l. In cases where funding is required but there can be no commitment of money until approvals are received, a letter of "intent to fund" from the appropriate funding institution indicating the amount of funds and their specified uses.
 - m. The most recent corporate annual report indicating availability of sufficient funds to finance the development together with explanatory material interpreting the report, when requested.
 - n. A statement of the Applicant's prior experience or appropriate training, or both, relating to the construction and operation of a solid waste facility or in construction using beneficial use secondary materials.
 - o. Any other information that the Applicant determines will assist the Board in making its evaluations and its findings.
- C. An application for a solid waste facility permit shall not be deemed acceptable for processing until all information and data required to evaluate the application have been submitted. The fact that an application is deemed acceptable for processing does not prohibit the Board from requesting further relevant information and data.
- D. Terms of Jay Solid Waste Facility Permit:
- 1. A Jay Solid Waste Facility Permit shall remain in effect unless modified, revoked, or suspended. Permittees shall comply with applicable operating requirements, including annual reporting requirements.
 - 2. Approval to construct, alter or expand the solid waste facility or construct using beneficial use secondary material shall not relieve any person of the responsibility to comply fully with application provisions of all other parts of this Ordinance or other Jay Ordinances or State or Federal law.
- E. Any duly authorized representative or employee of the Board or the Town of Jay may, upon presentation of appropriate credentials, at any reasonable time of day before, during and after construction:

1. Enter any establishment or other place which is not a residence, or any conveyance, where or in which solid waste or beneficial use secondary materials are generated, handled, disposed or placed.
2. Inspect the property and/or inspect or obtain samples of any solid waste or beneficial use secondary materials including samples from any conveyance in which solid waste or beneficial use secondary materials are being or have been transported as well as samples of any solid waste containers or labels.
3. Inspect and copy any records, reports, information or test results relating to solid waste or beneficial use secondary material.
4. Take photographs or measurements of the solid waste facility or beneficial use construction activities and operations.
5. Obtain samples of the construction materials.
6. Conduct environmental monitoring.

Twenty-Second, Sec. 37.

§9-403 APPLICATION--SPECIFIC

A. Qualifications of a Person Preparing the Application. For the purposes of this subsection, the provisions of ME Rules Chapter 400, Section 3.C.(5) , are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303. Laboratory analysis required in support of permitting, construction, operation, closure or post-closure monitoring and maintenance shall be performed by a qualified laboratory.

B. General Licensing Requirements. For purposes of this subsection, the provisions of ME Rules Chapter 401, Section 1 are hereby adopted and incorporated herein by reference as modified in this Ordinance, including § 9-303.

C. Applicants Requirements. The information from this Chapter shall be submitted to the Board as part of a completed application to construct, alter or expand a solid waste facility along with the following:

- 1. Required Information.** For purposes of this subsection, the provisions of ME Rules Chapter 401.2 are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303 §-.
- 2. Solid Waste Characterization Program.** For purposes of this subsection, the provisions of ME Rules Chapter 405, Section 6 and ME Rules Chapter 401 Section 2.F(10), are hereby adopted and incorporated by reference, provided however, that the reference to "Chapter 405" in Chapter 401 Section 2.K. shall read "§ 9-403C.1 of this Chapter".
- 3. Environmental Monitoring Program.** All applicable information as required in § 9-602.S. of this Chapter.

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4. Operations Manual. A copy of the operations manual as required pursuant to ME Rules Chapter 401. Section 2.L., adopted and incorporated herein by reference, and § 9-602L of this Chapter, as complete as possible recognizing that certain information may not be available at the time of application.

5. Compliance Record.

a. The full name, business address, home address, date of birth, social security number and/or Federal Employer Identification number of the applicant; (or if the applicant is a business concern, of any officers, directors, partners, supervisory employees with respect to the proposed solid waste operations) and all persons or business concerns holding more than 5 percent of the equity in or debt liability of that business (unless the debt liability is held by a charter lending institution).

b. The full name and business address of any company which collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which the applicant holds an equity interest.

c. A listing and explanation of any felony convictions, any criminal convictions of environmental laws, and any adjudicated civil violation of environmental laws administered by the MBEP, the State of Maine, other States, the United States, or another country in the 10 years immediately preceding the filing of the application.

d. A listing and explanation of any ongoing court proceeding or any ongoing administrative enforcement action not already provided under subsection (c) in which the person is a party and which concerns environmental laws administered by the MBEP or the State of Maine.

e. A listing of any agencies outside of Maine which have regulatory responsibilities over the applicant in connection with its collection, transportation, treatment, storage or disposal of solid or hazardous wastes;

f. Any other information required by the Board that relates to the character of the applicant; and

g. A listing and explanation of administrative consent agreement or consent decrees entered into by the applicant or the operator for violations of environmental laws administered by MBEP, the State of Maine, other states, the United States or another country in the 10 years immediately preceding the filing of the application.

6. Closure and Post-Closure Monitoring and Maintenance. All applicable information as required in § 9-701 and § 9-801 of this Chapter.

D. Initial Permits and Permit Renewals. Applications for an initial Jay Solid Waste Facility Permit for an existing solid waste facility licensed by MBEP or the Department and at which no construction, alteration or expansion of the solid waste facility is proposed, and applications for a permit renewal required pursuant to § 1-106 of this Ordinance shall include all appropriate information relating to the operation of the solid waste facility, including but not limited to:

1. A written discussion of any changes in operation and/or monitoring of the solid waste facility during the previous permit period;
2. A narrative summary of the monitoring data for the previous five years of operation;
3. A report covering the entire monitoring history of the solid waste facility, including a detailed outline of the solid waste facility's monitoring program, all monitoring results organized in a clear and concise table with an explanation of any missing or non-representative data, an analysis of any trends, any proposals for upgrading the monitoring program, and a discussion of monitoring results;
4. A detailed report on the operational history of the site, which shall include as a minimum: estimates of remaining permitted capacity and remaining site life, information on leachate generation rates and the management or fate of that leachate, discussion of equipment and personnel being used, discussion of operating problems encountered and how those problems have been or will be solved, efforts made to establish and maintain compliance with this Ordinance and permit conditions, and any plans for upgrading solid waste facility operations that may affect compliance with environmental laws and regulations;
5. A disclosure statement regarding criminal or civil violations, as described in subsection C.5 of this Section; and
6. The nature and source of the waste to be accepted, and the recycling and source reduction provisions to which that waste is subject.

E. Public Notice Requirements. Prior to submitting an application to the Board for an existing solid waste facility, a new solid waste facility, an expansion of an existing solid waste facility, a variance for a solid waste facility, a closing plan, a permit renewal, or a permit transfer the Applicant shall provide for public notification as follows:

1. Publish the public notice once in a major newspaper circulated in the Town of Jay. The notice must appear in the newspaper during the week the application is filed with the Board.
2. Send a copy of the public notice to the owners of property abutting the land on which the project is located. Abutters' names and addresses can be obtained from town tax maps. Notice shall be sent to all abutters by certified mail so that the abutters receive notice during the week the application is filed with the Board.

F. Variances. Any owner or operator may seek a variance to the provisions governing the establishment, expansion, alteration, operation or closing of the solid waste facilities subject to this Chapter by using the procedures described below. It is the responsibility of the Applicant to demonstrate that its proposal will comply with the intent of this Ordinance.

1. Variances Affecting Site Location, Solid Waste Facility Design and Construction.

The Board has determined that the requirements of these rules affecting the site location criteria for new, expanded or re-permitted solid waste facilities are best able to ensure that a solid waste facility will not pollute any waters within the Town of Jay, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance. Whenever an owner or operator seeks to vary from the requirements of these rules relating to site location criteria, or solid waste

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facility design and construction, the owner or operator must present clear and convincing evidence that the solid waste facility site's location, design or construction is distinctive in some way that allows for compliance with the intent of this Ordinance.

Applications or plans that vary from the requirements of this Ordinance shall identify the provisions from which literal compliance is sought, the proposed alternative, and such clear and convincing evidence as is necessary to demonstrate affirmatively that the intent of this Ordinance will be met. The Board shall consider the variance as part of its comprehensive review of a complete application.

2. Variances Affecting Contents of Permit Applications and Closure Plans.

Specific requirements relating to the contents of a solid waste landfill closure plan and the application requirements of § 9-402 B.2. may be varied with the approval of the Board.

3. Variances Affecting Operation.

Whenever an owner or operator seeks to vary any aspect of a solid waste facility's or an activity's operation from the operating requirements of this Chapter, application may be made to the Board for a special condition to the permit to operate.

a. Criteria. The Board may grant a variance only when it finds that a solid waste facility will not contaminate any waters within the Town of Jay, contaminate the ambient air, constitute a hazard to health and welfare, or create a nuisance, and, specifically, that compliance with the intent of the operational rule is affirmatively demonstrated.

b. Contents of Application. Requests for a variance properly submitted to the Board, shall include, but not be limited to:

- i. Identification of the specific provisions of these rules from which variance is sought;
- ii. The alternative operational procedure proposed and the reasons why it meets the intent of the rule;
- iii. The reasons for which a variance is requested, including the environmental, economic and technological justifications; and
- iv. Any other relevant information the Board may request or the applicant may wish to provide.

c. Term and Renewal of Conditions. The term of a variance shall be concurrent with the term of the permit to operate, or for such lesser term as the Board may specify. A variance shall be renewed according to the procedure required for the renewal of a permit to operate, unless the Board, on a case-specific basis, shall specify another procedure.

4. Prohibitions.

The Board shall not grant a variance for a new, expanded or re-permitted solid waste facility::

- a. When the proposed solid waste facility poses a threat to the quality of a significant sand and gravel aquifer which it does not overlie; or
 - b. When the proposed solid waste facility poses an threat to the quality of an underlying fractured bedrock aquifer as that term is defined in 38 M.R.S.A. Section 1310-N (2-A) (B).
- G.** For purposes of this subsection, the provisions of ME Rules Chapter 401, Section 1.C.(2) , are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303 .

§9-404 CONDITIONS OF JAY SOLID WASTE FACILITY PERMIT

The Board may impose any appropriate and reasonable conditions to insure compliance with this Chapter and Ordinance. However, every Jay Solid Waste Facility Permit shall be subject to the following standard conditions and the conditions of Chapter 3:

- A. Employees and authorized representatives of the Town of Jay shall be allowed access to the premises of the permit holder during normal business and operating times and at such other times as the Board deems necessary to perform such tests and inspections and examine all records relating to the solid waste facility.
- B. All applicable State and Federal laws relating in any way to solid waste shall be complied with.
- C. Approval to construct shall become invalid if construction is not commenced within 2 years after the granting of a permit. The applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the solid waste facility until a new approval is granted. Reapplications for approval shall state the reasons why the development was not begun within two years from the granting of the initial approval and the reasons why the applicant will be able to begin the activity within two years from the granting of a new approval, if granted. Reapplications for approval may include information submitted in the initial application by reference.
- D. The granting of a permit is dependent upon and limited to the reports, specifications, and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, reports, specifications, and supporting documents is subject to review and approval prior to implementation.
- E. The applicant shall secure and comply with all applicable federal, state, and local licenses permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- F. The applicant shall submit all reports and information requested by the Board demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins. During construction, the applicant shall meet the requirements of ME Rules Chapter 401, Section 3 and Section 5.M. ,

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which are hereby adopted and incorporated herein by reference., as modified in this Ordinance, including § 9-303

G. Monitoring and reporting requirements contained in any Solid Waste Facility Permit issued by the Board shall be consistent with the requirements of this Chapter. In the event any monitoring or reporting requirements in Chapter 3 of this Ordinance are inconsistent with or less stringent than monitoring or reporting requirements in this Chapter of the Ordinance, the permit holder shall comply with the requirements of this Chapter of the Ordinance.

H. A permit holder is required to accept only solid waste which is subject to recycling and source reduction programs at least as effective as those imposed by State law.

I. No permit holder shall knowingly hire as an officer, director, supervisory or key employee, or knowingly allow to acquire an equity interest or debt liability interest, any person having been found guilty of a felony or to have committed any violation of environmental law or rules without first obtaining the approval of the Board.

J. Whenever any lot of land upon which an active, inactive or closed solid waste facility is located is transferred by deed, the following shall be expressly stated in the deed:

1. The type of solid waste facility located on the lot and the dates of its establishment and closure.

2. A description of the location and the composition, extent, and depth of the solid waste deposited.

If asbestos-containing waste or asbestos-contaminated waste has been disposed on a site, the location coordinates must be identified.

K. A copy of the permit must be included in all contract bid specifications for the solid waste facility.

L. The owner, operator and permit holder, whether the same person or different people, shall all be jointly and severally responsible for compliance with the Ordinance and the Permit.

Twenty-Second, Sec. 38.

§9-405 (Repealed)

§9-406 LIABILITY INSURANCE

A. All owners or operators, with the exception of municipally owned and operated solid waste facilities, shall submit with the application and annually thereafter proof of liability insurance for the solid waste facility for sudden and accidental occurrences. Coverage shall be provided for bodily injury and property damage and must be provided during active life and closure of the solid waste facility. The level of coverage must be at least \$1,000,000.00 per occurrence and \$2,000,000.00 annual

aggregate, unless, because of a greater risk, a higher minimum coverage is required by the Board for a particular solid waste facility.

B. All liability insurance coverage amounts must be exclusive of legal defense costs.

C. If liability insurance is not available, a \$2,000,000.00 letter of credit drawn on a reputable bank, the terms of which the Board must approve, may be used in lieu of liability insurance for sudden and accidental occurrences.

D. The owner or operator of a private, non-commercial, solid waste facility may use a financial test in lieu of liability insurance coverage under certain conditions. These conditions include:

1. That the owner or operator of the solid waste facility derives more than 50 percent of its income from activities not associated with the handling, transportation, or disposal of solid waste or hazardous waste; and

2. That the owner or operator must meet the financial test for liability coverage in 40 CFR 264.147(f).

E. The wording of liability insurance endorsements shall be subject to approval by the Board. Said endorsements shall contain conditions equal to the following:

1. The Insurer is liable for the payments of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer;

2. Whenever requested by the Board, the Insurer agrees to furnish a signed duplicate original of the policy and all endorsements;

3. Cancellation of this endorsement, whether by the Insurer or the insured, shall only be effective upon written notice and only after the expiration of sixty (60) days after a copy of the written notice is received by the Board; and

4. Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a written copy of the notice has been received by the Board.

F. Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

G. If a liability insurance policy is written as a "claims made" policy, an endorsement must provide for a discovery period of at least twelve (12) months beyond the date of expiration or cancellation of the policy. The endorsement must also provide that the underwriter will notify the public according to the requirements below:

1. At least sixty (60) days prior to the date upon which the policy will expire or be cancelled, give written notification to all owners of property abutting the solid waste facility and to the Jay Code Enforcement Officer that insurance for the solid waste facility will expire or be cancelled. The notification shall include the date of expiration or cancellation, the fact that claims against the insured must be filed within twelve (12) months from the date of expiration or cancellation, and shall specify where and how can be filed;

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2. During the first, third, sixth and ninth month subsequent to the date of expiration or cancellation, the underwriter shall place in each of the State of Maine's major newspapers (Portland Press Herald, Bangor Daily News, Lewiston Sun, Kennebec Journal, and Waterville Sentinel) and in all local newspapers published or widely distributed in the Town of Jay an advertisement designed to attract notice and containing the information specified in 1, above.

H. An owner or operator of a solid waste facility using a financial test for liability coverage in lieu of liability insurance shall provide the Board with a letter from the owner's or operator's chief financial officer that demonstrates the owner's or operator's financial responsibility for liability coverage, including the ability of the owner or operator to pay any judgment that may be entered against the owner or operator, and a copy of an independent certified public accountant's report based on an audit done by generally accepted auditing standards, including an examination of the owner's or operator's financial statements for the latest completed fiscal year, indicating that the owner or operator has sufficient liquid assets which are not otherwise encumbered to be able to pay a judgment to the level of coverage required for liability insurance, that is, \$1 million per occurrence of \$2 million annual aggregate.

§9-408 WOOD WASTE FACILITY CRITERIA

1. The Board shall issue a permit for the location, establishment, construction, expansion or operation of a wood waste facility only if the Applicant demonstrates that the following criteria will be met:

a. The criteria set forth in ME Rules Chapter 401.7, are hereby adopted and incorporated herein by reference; provided, however, that ME Rules Chapter 401.7(C) shall not be incorporated herein and except as modified in this Chapter and Ordinance, including § 9-303.

2. For the purposes of this section, a permit is not required for the location, establishment, construction, expansion or operation of a wood waste facility if the wood waste is generated on-site by a manufacturing process and the wood waste that is generated on-site is used, recycled or reused on-site.

PART 5

STANDARDS

Section

§9-501 Issuance of a Jay Solid Waste Facility Permit

§9-502 Denial of a Jay Solid Waste Facility Permit

§9-503 Permit Transfers and Violations

§9-501 ISSUANCE OF A JAY SOLID WASTE FACILITY PERMIT

The Board shall issue a Jay Solid Waste Facility Permit in accordance with Chapter 3 when it determines that:

A. The solid waste facility will not pollute any water, within the Town of Jay, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance.

B. In the case of a new solid waste facility or solid waste facility expansion, the Applicant has the financial capacity and technical ability to meet the standards of this Chapter and ME Rules Chapter 400, Sections 4.B. and 4.C. as hereby adopted and incorporated by reference, as modified in this Ordinance, including § 9-303 .

C. In the case of a new solid waste facility or solid waste facility expansion, the Applicant has made adequate provision for traffic movement of all types into, out of and within the proposed solid waste facility. The Board shall consider traffic movement both onsite and offsite. In making its determination, the Board shall consider vehicular weight limits, road construction and maintenance standards, vehicle type, public safety and congestion on any public or private road traveled by vehicles transporting waste to or from the proposed solid waste facility, and other relevant factors. The Applicant shall use ME Rules Chapter 401, Section 4.C, as hereby adopted and incorporated by reference, as modified in this Ordinance, including § 9-303 , as a guide to develop a demonstration of adequate provisions for the Board.

D. In the case of a new solid waste facility or solid waste facility expansion, the Applicant has made adequate provision for fitting the proposed solid waste facility into the existing natural environment and the proposed solid waste facility will not adversely effect existing uses, scenic character, air quality, water quality or other natural resources in the Town of Jay. The Applicant shall use ME Rules Chapter 401, Section 4.D , as hereby adopted and incorporated by reference, as modified in this Ordinance, including § 9-303 , as a guide to develop a demonstration of adequate provisions for the Board

E. The Applicant has made adequate provisions for the control of odors.

F. The solid waste facility will be operated such that the volume of the waste and the risks related to its handling and disposal have been reduced to the maximum practical extent by recycling and source reduction prior to disposal as required by 38 M.R.S.A. 1310N(5) and ME Rules Chapter 400.6.

G. The solid waste landfill meets the standards governing hydrogeological criteria for siting or designing a solid waste landfill or governing the engineering criteria related to waste handling and disposal areas of a solid waste landfill set forth in the ME Statutes, ME Rules, and the applicable provisions of this Ordinance. Existing solid waste facilities licensed by the Department or MBEP prior to May 24,1989, shall be considered as having met the siting and design requirements of this Chapter (e.g. those which do not pertain to the operation of the solid waste facility). Vertical expansions of an existing solid waste facilities licensed by the Department or MBEP prior to May 24,1989, shall be considered as having met the design requirements of this Chapter, provided the Applicant has demonstrated that the proposed expansion will not compromise the integrity of the existing solid waste facilities.

H. The solid waste facility provides a substantial public benefit, subject to 38 M.R.S.A. § 1310-N (3-A), and 38 M.R.S.A. § 1310-AA .

I. Where applicable, financial assurances for closure, post-closure monitoring and maintenance, and corrective action have been established.

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- J. In the case of a new solid waste facility or solid waste facility expansion, the proposed solid waste facility will be built on soil types that are suitable to the nature of the undertaking and will not cause erosion of soil or sediment.
- K. In the case of a new solid waste facility or solid waste facility expansion, the solid waste facility will not pose a risk that a discharge to a significant ground water aquifer will occur.
- L. In the case of a new solid waste facility or solid waste facility expansion, the activity will not cause or increase the flooding of the solid waste facility area or adjacent properties nor create a flood hazard to any structure.
- M. In the case of a new solid waste facility or solid waste facility expansion, the Applicant has made provisions for utilities including water supplies, sewerage facilities, solid waste disposal and roadways required for the project, and the proposed solid waste facility will not have an adverse effect on the existing or proposed utilities and roadways in the Town of Jay.
- N. The solid waste facility satisfies all the applicable requirements of this Ordinance.
- O. The solid waste facility is not currently polluting any water within the Town of Jay and there is no contamination in the ground or surface water beyond the solid waste boundary.
- P. The solid waste facility or construction using beneficial use materials or products will not pose a risk to the quality of a classified body of surface water.
- Q. The construction using beneficial use materials or products will be built on soil types that are suitable to the nature of the undertaking and will not cause slope instability.
- R. If the Applicant has a criminal or civil record of environmental law violations, all reasonable efforts have been made to clean up or mitigate damage caused by the violations.

§9-502 DENIAL OF A JAY SOLID WASTE FACILITY PERMIT

- A. Notwithstanding § 3-105 D of this Ordinance, the Board shall deny an application for a Jay Solid Waste Facility Permit or deny consent for a permit transfer if the Applicant refuses to comply with the informational requirements of § 9-403 B.7. of this Chapter, or if the information supplied is untrue or misleading as to the facts pertaining to an applicant's criminal or civil record.
- B. Notwithstanding § 9-501 of this Ordinance, the Board shall deny an application for a Jay Solid Waste Facility Permit if an existing solid waste facility has contaminated ground or surface water beyond the solid waste boundary. Such a solid waste facility can only continue to operate under the provisions of a schedule of compliance or a court order. Unless the schedule of compliance or court order contains provisions for closure of the solid waste facility, the Applicant is free to re-apply for a permit beyond the dates contained in the schedule of compliance or court order. If an existing solid waste facility is operating under the terms of a schedule of compliance or court order or is currently polluting waters within the Town of Jay, that solid waste facility must demonstrate successful corrective action before the Board can find that the solid waste facility will not continue to pollute and issue a permit. In addition, before issuing a permit, the Board must find that all criteria outlined in the court order or schedule of compliance and this Ordinance are met. Any schedule of compliance issued after June 17, 1996 shall state its duration, not to exceed five (5) years. Nothing

in this provision shall limit the authority of the Board to renew a schedule of compliance for an additional term or terms.

C. The Board may refuse to grant a permit for a solid waste facility, or to approve transfer of a solid waste facility permit, if it finds that the owner or operator or any person having a legal interest in the applicant or the facility has been convicted of any crime or adjudicated to have committed any civil violation of environmental laws administered by the MBEP or other laws of the State of Maine, other states, the United States, or another country.

The Board may deny or revoke a permit because of such convictions or adjudications based on its judgment of the offense in question and whether the person fails to demonstrate rehabilitation by clear and convincing evidence. In making this determination the Board may consider the nature and responsibilities of the position that the individual would hold, the nature and seriousness of the offense, the date and circumstances under which the offense occurred, the age of the individual when the offense was committed, whether the offense was an isolated or repeated incident, any evidence of rehabilitation, and any recommendation offered by the Attorney General of Maine to the MBEP.

In the case of any person found to have violated any federal or state environmental protection laws, rules or regulations, the Board will consider whether such person is rehabilitated based on whether he or she has made all reasonable efforts to clean up or mitigate any environmental damage caused by the activities that resulted in a guilty verdict or conviction, and/or has made restitution to injured parties.

D. Notwithstanding § 9-501 of this Ordinance, the Board shall deny an application for a new commercial solid waste landfill. Further, the Board shall only relicense or approve a transfer of an existing commercial solid waste landfill, or license expansions of commercial solid waste landfills, if the applicable provisions of 38 M.R.S.A. 1310-X have been satisfied.

§9-503 PERMIT TRANSFERS AND VIOLATIONS

A. Violations of the conditions under which a permit is issued shall constitute a violation of that permit, against which enforcement action may be taken, including revocation, pursuant to Chapter 4B.

B. Notwithstanding § 3-112 H of this Ordinance, no person shall transfer ownership, in whole or in part, of a solid waste facility permit or schedule of compliance without first obtaining approval for the transfer of the solid waste facility permit or schedule of compliance from the Board. The Board, at its discretion, may require that the proposed new owner of the solid waste facility apply for a new permit or may approve the transfer of the existing permit upon a satisfactory showing that the new owner has the technical and financial capacity to abide by all the permit terms and conditions, and satisfy all applicable criteria of this Ordinance. Any applicant seeking approval to transfer a permit or schedule of compliance shall submit compliance record information as specified in § 9-403 C.5. , and shall comply with the public notice requirements of § 9-403 E.

C. The holder of a permit or schedule of compliance and proposed transferee or assignee shall be jointly and severally liable for failure to obtain approval for the solid waste facility transfer as required by this subsection. Until the transfer has been approved as required by this subsection the holder of a permit or schedule of compliance and proposed transferee or assignee shall be jointly and severally liable for continued compliance with this Chapter.

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Twenty-Second, Sec. 39.

PART 6

CONSTRUCTION AND OPERATIONS

Section

§9-601 Construction Requirements

§9-602 Operating Requirements

§9-601 CONSTRUCTION REQUIREMENTS

Unless specified otherwise in a Jay Solid Waste Permit, all solid waste facilities are subject to the following construction requirements:

A. Solid Waste Landfill Construction. For purposes of this subsection, ME Rules Chapter 401, Section 3 , are hereby adopted and incorporated herein by references, as modified in this Ordinance, including § 9-303 .

§9- 602 OPERATING REQUIREMENTS

Unless specified otherwise in a Jay Solid Waste Facility Permit, all solid waste facilities are subject to the following operating requirements:

A. Operating Requirements. For purposes of this subsection the provisions of ME Rules Chapter 401, Section 4.C. , are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303 .

B. Operation Training and Certification Program. For purposes of this subsection the provisions of ME Rules Chapter 401, Section 4.B. , are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303 .

C. Annual Report. For purposes of this subsection the provision of ME Rules Chapter 401, Section 4.D. are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303 .

D. First Aid. The permit holder shall have and maintain adequate first-aid supplies at the solid waste landfill during operating hours and at all times when solid waste landfill personnel are present.

E. Hazardous and Special Waste Exclusion Plan. Only wastes permitted by the Board shall be accepted at a solid waste landfill. The operator shall develop and implement a plan for the detection, identification, handling, transportation, and disposal of any and all materials not permitted by the Board which may be delivered to the solid waste facility. For the purposes of

this subsection, the provisions of ME Rules Chapter 400, Section 9 and Appendix B. , are hereby adopted and incorporated herein by reference, as modified in this Chapter and Ordinance.

F. Drainage of Surface Water. The permit holder shall insure that the solid waste facility is graded and provided with a drainage system to minimize surface water run-on/run-off to reduce the amount of leachate generated and the potential for erosion. All structures shall be constructed as required in accordance with the applicable run-on/run-off control system provisions of § 9-403C.1. of this Chapter.

G. Dust Control. The operator shall use suitable measures to control dust on the site, the access road, any other areas related to the general solid waste landfill operations. The excessive use of water which would produce a leachate, or the use of waste oil or leachate is prohibited. Solid waste facility that accept wastes such as ash, asbestos, or sludge shall provide and utilize tire washing facilities, or an effective approved alternative, to prevent the accumulation of dust, mud, or waste materials on access, private or public roads.

H. Equipment.

1. Equipment in use at the solid waste landfill shall be sufficient to meet the operating requirements of this Chapter and as approved by the Board.

2. The operator shall maintain equipment to assure satisfactory performance capability for the various operations necessary for excavation, compaction, transportation, covering and other aspects of a solid waste landfill operation and provide for the prompt repair and replacement of such equipment.

3. The operator shall have a contingency plan for obtaining back-up equipment, to be used when back-up equipment is needed. Breakdown of solid waste landfill equipment affects the proper maintenance of the solid waste landfill. The interruption of proper operational procedures may result in enforcement action by the Board, if such a breakdown is not corrected in a timely manner. To alert the Board of operational difficulties, operators shall submit a written notice to the Code Enforcement Officer within 48 hours after any equipment failure, explaining briefly the problem and the corrective measures being taken.

I. Erosion Prevention.

1. The operator shall take whatever measures are necessary to minimize erosion during operation and after final cover has been placed and shall plant suitable vegetation over the area as soon as is practicable. Erosion control should be compatible with the Soil Conservation Service recommended practices or other appropriate standards as approved by the Board.

2. Other areas at the solid waste facility that present a high potential for erosion or that will be inactive for 6 months or more shall be planted with suitable vegetation.

J. Leachate Management. The operator shall manage leachate in accordance with the standards in § 9-403C.1.F.(5). of this Chapter and shall make every possible effort to minimize leachate production through such methods as control of stormwater infiltration and inflow, minimizing the

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active area of the solid waste landfill, and applying intermediate or final cover as soon as possible after landfilling ceases in an area.

1. Leachate, Leachate Collection, Leachate Detection System and Leachate Treatment Residue (LDS) Monitoring.

A plan for monthly monitoring of the leak detection system(s) (LDS) and quarterly leachate water quality shall be submitted to the Board for review and approval with each completed application for a facility.

A program of periodic monitoring of leachate quality and volume, leak detection system (LDS) fluid quality, volume and flow rate, and leachate treatment residue composition and generation rate must be conducted at all solid waste facilities which have a leachate collection and/or detection system. A sampling and analytical work plan must be submitted for Board review and approval. The sampling and analytical work plan for leachate treatment and residue characterization must meet the requirements of § 9-403C.2. The Board approved sampling and analytical work plan must be part of the Environmental Monitoring Program manual for the solid waste facility, and must include all proposed monitoring points. Sampling schedule, methods of sample collection and preservation, analyses to be performed, quality assurance/quality control, analytical and statistical methods and reporting format must be specified. At a minimum, the following must be incorporated into the monitoring plan:

- a. Sampling points should be located as close as possible to the generation point.
- b. Sampling points in primary and secondary leachate collection systems and LDSs should be adequate to sample liquids beneath each leachate collection area, solid waste landfill cell, and the leachate holding solid waste facility.
- c. Leachate and LDS fluid generation rates must be reported in gallons per acre per day, using total daily flow recording.
- d. Leachate and LDS fluid must initially be characterized through the sampling and analysis of four or more independent samples of the leachate and LDS fluid. Operators of existing solid waste landfills with a leachate monitoring plan approved by the Board and consistent with the requirements of the Ordinance are not required to perform an initial characterization of leachate and LDS fluid provided the wastes currently accepted are chemically consistent with wastes previously accepted.
- e. Detection monitoring for leachate must be for the same parameters and at the same frequency as approved for the ground water detection monitoring program, except as may be allowed by the Board and the results reported in the solid waste facility's Environmental Monitoring Program quarterly and annual reports.
- f. Parameters consistently undetected in a solid waste facility's leachate, or in results from its ground water monitoring network, may be deleted from the leachate monitoring program upon approval by the Board.
- g. Unless otherwise approved by the Board based on site-specific characteristics, or required by the solid waste facility's Response Action Plan, sampling, analysis, and reporting requirements for LDS fluid must be as follows:

- (1) Sampling and reporting of the field parameters of flow, pH, temperature, specific conductance, turbidity, DO and field observations must be conducted monthly, and reported with leachate and water quality information.
 - (2) Monitoring for other than field parameters must be for the same parameters and at the same frequency as approved for the ground water and/or corrective action monitoring programs and the results reported in the solid waste facility's Environmental Monitoring Program Quarterly and Annual reports.
- h. Leachate residues generated by on-site treatment or settlement must be analyzed prior to disposal.

This plan shall be implemented at the start of solid waste facility operations and shall continue through the post-closure period until the Board approves its discontinuance.

All leachate quality, leak detection system, and leachate treatment residue monitoring results shall be submitted in the Environmental Monitoring Program Quarterly and Annual Reports.

K. Leachate Collection and Leak Detection Inspection and Cleaning. Regularly schedule inspection and cleaning of the collection and detection systems shall be performed.

L. Operations Manual. The operator shall prepare and maintain an operations manual of current policies and procedures for the solid waste landfill, beneficial use construction activities and all corrective actions.

1. **Revise Operations Manual.** Prior to commencement of operations of a new or expanded solid waste facility, the operations manual provided with the application must be revised to reflect any changes which occur during the solid waste facility licensing and construction processes.
2. **Certified Copies.** The operator shall issue certified copies of the operations manual being used for the solid waste landfill, beneficial use construction activities and corrective actions to the Board and to key operating and management personnel of the solid waste facility. In addition, a certified copy must be available for use at the solid waste facility at all times. The operator is responsible for providing timely updates to all certified copies, distributing certified copies to individuals whose job assignments require them, and making and distributing changes to policies and procedures to the certified copies as they are implemented.
3. **Contents.** The operations manual must include the information necessary to enable supervisory and operating personnel, and persons evaluating the operation of the solid waste landfill, beneficial use construction activities and all corrective actions, to determine the sequence of operation, policies and procedures, and monitoring, maintenance, inspection, and legal requirements that must be followed for safe, orderly and environmentally sound operation on a daily, monthly, quarterly, yearly, and life cycle basis. The operations manual must address each of the areas identified in § 9-602.A. and Board approved beneficial use construction activities. Legible copies of the record drawings must be included in the operations manual or must be readily accessible to operating personnel.

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4. Annual Review. The operations manual must be reviewed annually by the operator and updated as necessary.
5. Training. The operator shall familiarize operating personnel with relevant sections of the operations manual. For new solid waste facilities or expansions of existing solid waste facilities, the owner or operator must demonstrate compliance with the training requirements in § 9-602B prior to commencing solid waste landfill operations. For existing solid waste facilities, the owner or operator must demonstrate compliance with the training provisions for key personnel by November 2, 2001.

M. Operational Records. The operator shall maintain, for the active life of the solid waste facility, a record of operational information, which shall include the type and quantity and origin of waste received, the equipment, personnel and cover used, the portion of the solid waste landfill used, any deviations made from the approved plans and specifications, data from the monitoring program, fiscal information, accident reports, equipment breakdowns, inspection records in accordance with § 9-602.A, and fires.

N. Fire Protection. The operator shall take suitable measures for the prevention and control of fires at the solid waste facility and comply with at least the following:

1. Arrange for the Jay Fire Department to provide emergency service whenever called;
2. Provide sufficient on-site equipment such as detachable fire extinguishers, maintained in working order, for minor fires;
3. Comply with the following rules of the State of Maine Bureau of Forestry; and,
 - (a.) A strip of 10 feet wide cleared to a mineral soil shall be constructed on all sides of the solid waste boundary. All grass, weeds, slash, brush and debris, and other inflammable material shall be removed for a distance of 100 feet in all directions outside the cleared mineral strip.
 - (b.) Trees need not be removed except that green branches of conifers and dead branches of all trees shall be pruned to a height of 10 feet above the ground. Dead snags from all trees shall be removed.
 - (c.) During periods of high forest fire hazard, when any demolition debris is burning, a watchman must be onsite.
4. Maintain a soil stockpile sufficient to cover hot loads.

O. Communication. A means of communication with the Jay Fire Department, Jay Police Department, or operator's office shall be provided at the solid waste facility.

P. Supervision of Operation. The operation of the solid waste facility and beneficial use construction activities shall be under the overall supervision and direction of a person qualified and

experienced in matters of solid waste disposal and beneficial use construction activities. An attendant shall be on duty at the solid waste facility site during all operating hours at a solid waste facility receiving solid waste. Scavenging through waste shall be prohibited.

Q. Vector Control.

1. The on-site population of disease vectors shall be minimized through the periodic application of cover material or other techniques as appropriate to protect public health and as approved by the Board.
2. A routine program for the control and elimination of insects and rodents at the solid waste landfill may be required by the Board. The operator shall implement, when necessary, supplemental vector control measures, including but not limited to the use of effective insecticides and rodenticides.

R. Litter Control.

1. The operator shall provide for routine maintenance and general cleanliness of the entire solid waste facility site.
2. The operator shall control wind-blown paper or other light materials by using suitable permanent or portable fencing, earthen banks, natural barriers or some other effective device.

S. Environmental Monitoring Program. An Environmental Monitoring Program shall be submitted to the Board for review and approval with each completed permit application for a new, altered or expanded solid waste facility and a new or renewed permit. This Environmental Monitoring Program shall be implemented prior to start of landfilling operations and shall continue through the post-closure period until the Board approves its discontinuance. The program may be amended upon written approval of the Board.

The Environmental Monitoring Program shall be designed to detect and monitor effects of the solid waste facility on the surrounding environment, including ground and surface water and air, and to mitigate any threats, or potential threats, to the public health and safety or to the environment that may result from solid waste landfill operations. Ground water, surface water and air quality monitoring programs are required for each solid waste facility. At a minimum, the monitoring program shall address each of the following areas in this subsection.

1. Ground Water Monitoring. For purposes of this subsection the provisions of ME Rules Chapter 405, Subsection 2.A. , are hereby adopted and incorporated by reference, as modified by § 9-303, this Chapter and Ordinance, including the following:
 - a. Locations of suspected contamination will trigger Assessment Monitoring of all locations as outlined in § 9-902.S.3.
 - b. Upgradient and downgradient wells shall be screened in the same hydrogeologic unit, where practicable and applicable.
 - c. The placement and number of downgradient monitoring wells in locations of suspected contamination will be based on the extent of the plume downgradient of the solid waste

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boundary, changes and attenuation of the plume with time and the distance to receptors. In some cases multiple wells will be required along a particular flow path to define and assess the threat posed by the suspected contamination.

- d. Accessibility by vehicle shall be provided to all monitoring well locations.
 - e. The maximum allowable drawdown during low flow sampling shall be six (6) inches with the pump intake set near the center of the screened interval. Wells that cannot meet allowable drawdown requirements need to be identified and an approach to meet the goals of low flow need to be submitted for the Board's review.
 - f. Check new wells and all modified wells for stratification and set pump intake at the highest specific conductance.
2. **Surface Water Monitoring.** For the purposes of this subsection the provisions of ME Rules Chapter 405, Subsection 2.B., are hereby adopted and incorporated by reference, as modified in this Ordinance, including § 9-303.
 3. **Water Quality Monitoring Program.** For the purposes of this subsection the provisions of Me Rules Chapter 405, Subsection 2.C., are hereby adopted and incorporated by reference, as modified in this Ordinance, including § 9-303, along with the following:
 - a. All solid waste facilities shall demonstrate that the Water Quality Monitoring Program is consistent with the site's hydrogeology, ground water flow path, and directions, surface water drainage pattern and operations. This demonstration should be part of the solid waste facilities annual evaluation of the Water Quality Monitoring Program.
 - b. Detection monitoring requirements apply to new or existing solid waste facilities that have no detections or contaminants in ground water and/or surface water, or exhibit a deterioration of water quality of water quality has "returned" to background levels through corrective action or natural attenuation.
 - c. Assessment monitoring requirements apply to existing or expanded solid waste facilities that have detections of contaminants in ground water or surface water or have exhibited a statistical significant change in the water quality or a long term or short term water quality deterioration. Facilities will be in assessment monitoring until the solid waste facility has developed a Correction Action Plan and implemented a Correction Action Monitoring Program.
 - d. Sampling frequency will be quarterly unless otherwise approved by the Board.
 - e. If the results of detection monitoring indicate a possible deterioration in water quality at one or more ground water monitoring wells or surface water monitoring points, the owner/operator shall initiate an evaluation of the causes of the deterioration in water quality within 5 working days of its receipt of the laboratory results. A report of the evaluation, prepared and sealed by a qualified professional, must be submitted to the Board for review and approval within 45 days of the date the evaluation is initiated. The report may be a part of the regular monitoring report or a separate document. The evaluation must include the following:

- 1) An evaluation of possible errors, such as errors in sampling, analysis, or mathematical problems with the monitoring data. If it is determined that the problem lies with the lab, field sampling and/or record keeping then all affected water quality samples shall be retested.
- 2) A statistical analysis of the data from the monitoring program shall be performed in accordance with § 9-602.S.8. using a lower confidence level of 90%. Review change for consistency, persistency and repeatability.
- 3) A finding that a review of the solid waste facilities operation and practices was made and an evaluation of sources other than the solid waste facility which may have caused or contributed to the possible deterioration in water quality.
- 4) Resampling of affected location(s) should be completed within the same season as the initial sampling but not more than 4 weeks after the initial sample was taken.
- 5) If resampling confirms the initial results, the owner/operator will notify the Board that contamination has been detected. The next scheduled sampling event will be the first sampling for the assessment monitoring program.
- 6) Two weeks before the next regularly scheduled sampling event the owner/operator will submit a plan to the Board for the assessment monitoring program. If the assessment monitoring program requires additional sampling locations, a plan for the hydrogeologic assessment to be done in selecting additional locations must be provided. This plan will be the work schedule for installing the necessary wells and piezometers and provide the schedule to insure that the new location will be available for the second sampling event after the initial detection of contamination.
- 7) The detection of contamination or a specific type of contamination may require additional site characterization. If the contamination is one not previously detected or not reported as part of the waste characterization, additional waste characterization may be necessary. If the contamination detected is in wells or at depths not previously predicted from the site conceptual model and/or computer model done as part of the site characterization or assessment for the detection monitoring program, a site characterization plan shall be submitted to the Board with the assessment monitoring program.

4. Corrective Action Plan. For the purposes of this subsection the provisions of ME Rules Chapter 405, Subsection 2.D., and ME Rules Chapter 400, Subsection 11.B., are hereby adopted and incorporated by reference, as modified in this Ordinance, including § 9-303 , along with the following:

- a. Background or baseline water quality is the standard by which compliance is achieved.
- b. Corrective Action Monitoring Program

- 1) All corrective action water quality locations shall be sampled and the results shall be evaluated quarterly for: changes; detection of a test parameter not previously detected at a specific sample location; and a detection of VOC's, SVOC's or metals. A trend analysis shall be conducted to determine if there has been a significant increase or decrease in contamination and the results reported as part of the annual report due each

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year. The Mann-Kendall Test for trend will be used to determine if there has been a significant change in the data for each parameter. Discrete changes shall be evaluated in water quality to determine the significance of each change. Such analysis shall include as applicable, the use of statistical control charts with baseline values developed from historic data. The Board may establish site-specific baseline values and action levels through further actions.

a) Site Specific Water Quality Baseline Values and Action Levels. A corrective action water quality location whose results exceed the action levels established by the Board will be resampled immediately upon discovery of the exceedence. If the sample confirms the action level exceedence, a corrective action plan will be submitted to prevent further contamination and as appropriate restore conditions and capture the plume migration at that location. If resampling does not confirm the detected action level exceedence, the location(s) will be resampled at the next quarterly sampling event as a continuation of the confirmation process. If the next quarterly sampling confirms the initial action level exceedence, then a corrective action plan will be submitted to prevent further contamination and as appropriate to restore the water quality and prevent contaminated ground water from passing the location. If the next quarterly sampling does not confirm the initial action level exceedence, then the initial action level exceedence will be considered an anomaly. However, should the action level exceedence occur in the following year, the resampling will be done as stated above.

b) Detection of a VOC, SVOC, Metals, Toxics or other Test Parameter Not Previously Detected. For all surface water and ground water monitoring well corrective action water quality sampling locations where there is a detection of a VOC or SVOC not previously detected, the Board or its representative will be notified immediately and the sampling location will be resampled within two weeks of discovery of the parameter. For all surface water and ground water monitoring well corrective action water quality sampling locations where there is a detection of a metal that has not been previously detected, the Board or its representative will be notified immediately. The Board or its representative shall determine whether or not to resample a sampling location when there is a detection of a metal that has not been previously detected. If resampling confirms the detection, a corrective action plan will be submitted to prevent further contamination and as appropriate to restore conditions and capture the plume migration at that location. If resampling does not confirm the detection, the location(s) will be sampled at the next quarterly sampling event as a continuation of the confirmation process. If the next quarterly sampling confirms the initial detection, then a corrective action plan will be submitted for restoring the water quality and preventing contaminated ground water from passing the location. If the next quarterly sampling does not confirm the initial detection, then the initial detection will be considered an anomaly. However, should the detection occur in the following year, resampling will be done as stated above.

c) Mann-Kendall Test. A trend analysis shall be completed of water quality for each corrective action sampling location on an annual basis using the Mann-Kendall test. Any corrective action water quality sampling location where a 95% probability trend has been identified will be evaluated and appropriate remedial action proposed.

2) Water Quality Reporting. See § 9-602.S.9.

- c. The Corrective Action Monitoring Program will continue until the corrective action has successfully demonstrated through water quality data that the corrective action has mitigated the contamination, which triggered the corrective action monitoring.
 - d. Corrective Action Monitoring will revert to detection monitoring only when it can be demonstrated that the water quality has returned to background or baseline water quality and until the Board concurs that successful corrective action has been demonstrated.
5. Well and Piezometer Installation, Construction and Maintenance. For the purposes of this subsection the provisions of ME Rules Chapter 405, Subsection 5, are hereby adopted and incorporated by reference as modified in this Chapter and Ordinance, including the following:
- a. All monitoring wells shall be installed under the direction of a Maine Certified Geologist, or a geologist meeting the requirements of 32 MRSA § 4901 et. Seq.
 - b. A map or plans showing monitoring well locations and location of a benchmark to be used in determining well elevations shall be furnished.
 - c. The type and size of the well casing and screen shall be furnished.
 - d. The geologist description should include a estimate of the sediments plasticity and the results of the tests ran in the field to obtain the estimate (thread test, molding, slake test, etc.), an estimate of the sediments gradation to include an estimate of the percent fines (percent passing the #200 sieve) and the percent of 1/4 inch or larger material. If there are changes in the core from top to bottom, these changes should be noted and a description provided of each section of the core.
 - e. Engineering soil descriptions such as the Unified Soil Classification System are useful additions to the geologist's geological logging description and should be used whenever the geologist is qualified to make such descriptions
6. Leachate Management. For the purposes of this subsection the provisions of § 9-602.J and § 9-602.K are incorporated in the Environmental Monitoring Program.
7. Solid Waste Landfill Gas Monitoring Program. For purposes of this subsection the provisions of § 9-602.A, Subsection (11) are incorporated into the Environmental Monitoring Program along with the following:
- a. Perform an assessment of the air quality within and around the solid waste facility. This program includes as a minimum a qualitative and semi-qualitative sampling/screening of: background air; air around the solid waste landfill; air in leachate collective systems; air in any adjacent buildings; gas in solid waste landfill gas vents; and gas in any corrective actions.
 - 1) Air Quality Sampling/Screening. Air quality sampling/screening will be taken at a period agreed upon by the Board.
- Qualitative air quality sampling/screening measurements will be made using Photo Ionization Detector (PID), multi-gas meters (LEL and H2S monitor), explosimeter, OVA

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Flame Ionization Detector (FID) with a charcoal pre-filter. Semi-qualitative sampling/screening measurements will be made using a field Gas Chronograph (GC).

Field instruments will be calibrated in accordance with manufacturer's specifications each day, and a record of the calibration submitted with the Solid Waste Landfill Gas Monitoring report.

Qualitative and semi-qualitative sampling/screening will be obtained using the following procedure:

- a) Measurements from leachate collection system, solid waste landfill gas vents, and corrective actions will be obtained by inserting the instrument probe, probe sample tube extension, or sample pump suction line into the sample location to a point where confined space entry point is broken. Leave in head space for 15-20 seconds and record the highest reading.
 - b) Measurements for buildings and background will be obtained by measuring the ambient air within specified buildings or at specified areas of the solid waste landfill. Read ambient air concentrations for 15-20 seconds and record the highest reading.
 - c) Measure air temperature, barometric data, and wind speed at the beginning, mid point, and end of each sampling day.
 - d) Air samples will be analyzed/screened for percent Lower Explosive Limit (LEL) and calibrated for methane, hydrogen sulfide, percent oxygen, and the following non-methane volatile organic compounds:
 - Acetone;
 - Benzene;
 - Chlorobenzene;
 - Vinyl Chloride;
 - Ethyl Benzene;
 - Methyl Isobutyl Ketone;
 - Methyl Ethyl Ketone;
 - 1,2 Dichloroethene;
 - 1,2 Dichloropropene;
 - Methylene Chloride;
 - Tetrachloroethane;
 - Tetrachloroethene;
 - Tetrahydrofuran;
 - 1,1,1 Trichloroethane;
 - 1,2,2 Trifloroethane;
 - Trichloroethene;
 - Toluene; and
 - Total Xylene
- 2) Reporting. A separate Solid Waste Landfill Gas Monitoring Report will be submitted annually to the Board as an attachment to the solid waste landfill annual report. Each air quality report will include:

- a) Table of Contents;
- b) Introduction;
- c) Sample locations including a site location map and a discussion on sampling locations (background, solid waste landfill, leachate collection system, corrective actions, and buildings);
- d) Sampling collecting protocols, including a discussion of any sampling deficiencies or problems specific to the sampling results;
- e) Quality Assurance/Quality Control (QA/QC) includes: field QA/QC and equipment calibration data and a statement saying whether the QA/QC objectives were met;
- f) Analytical results including a discussion of the analytical results for each location and a tabulation of all results by location; and
- g) Concluding remarks including a comparison of past and current results by sample/screening and location and type and a recommendation for future sampling rounds.

8. Sampling and Analytical Plan. Develop a Sampling and Analytical Plan for the chemical and physical characterization of wastes, groundwater, surface water and leachate. For the purpose of this subsection provisions of ME Rules Chapter 405, Section 3.A. and Section 3.B., are hereby adopted and incorporated herein by reference, – as modified in this Ordinance, including § 9-303 , along with the sampling, handling and analysis of groundwater requirements of § 9-602.S.1. and the sampling, handling and analysis of surface water requirements in § 9-602.S.2. The Plan shall be submitted to the Board for review and approval prior to commencing with any environmental monitoring program.

- a. The Sampling and Analytical Plan shall include, at a minimum, a detailed description of the following:
 - 1) Identification of parameters to be analyzed;
 - 2) Sample collection methods;
 - 3) Sampling frequency;
 - 4) Procedures for decontamination of sampling equipment prior to sampling and between the collection of successive samples;
 - 5) Sample storage and preservation procedures;
 - 6) Sample holding times;
 - 7) Sample handling (chain-of-custody) protocols;
 - 8) Analytical methods;

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- 9) Estimated practical quantification limits for each parameter to be quantified;
 - 10) Sampling and analysis quality assurance/quality control procedures;
 - 11) Data reduction, validation and reporting methods including methods of statistical interpretation of analytical results; and
 - 12) A site map clearly depicting the location of all sampling points.
- b. The Sampling and Analytical Plan shall be developed in accordance with approved State or Federal guidance documents in order to assure adequate waste characterization. The applicable guidance documents shall include:
- 1) Test Methods for Evaluating Solid Wastes, USEPA, SW-846, 3rd Edition;
 - 2) Waste Analysis Plans, A Guidance Document, USEPA, EPA/530-SW-84-012, October 1984;
 - 3) Procedures for Handling and Chemical Analysis of Sediment and Water Samples, USEPA/Corps of Engineers, May 1981;
 - 4) Standard Methods for the Examination of Water and Wastewater, APHA/AWNA/WPCF, 16th Edition;
 - 5) Annual Book of ASTM Standards, Sections 5 and 11, ASTM, 1988;
 - 6) Methods for Chemical Analysis of Water and Wastes, USEPA, EPA600/4-79-020, March 1983; or
 - 7) An equivalent State or Federal guidance document as approved by the Board or Department.
- c. An independent, qualified laboratory shall perform all laboratory analyses.
- d. Resample locations that fall outside of the TDS/SpC ratio or duplicate sample locations that exceed the 10% differential. The resampling must occur within the same sampling season as the original sample.
9. Water Quality Monitoring Report. For purposes of this subsection, ME Rules Chapter 405., Section 3.C.(1) through Section 3.C.(5), are hereby adopted and incorporated by reference, as modified in § 9-303, this Chapter and Ordinance, including the following:
- a. Quarterly Report. Water quality reports, with quarterly water quality results archived in a format approved by the Board or its representative will be submitted quarterly to the Board (7 weeks after the last water quality sample is taken or 9 weeks after the first water quality sample is taken for a given sampling round, which ever comes first). Each water quality report will include:
 - 1) Table of Contents;
 - 2) Introduction;

- 3) Sample collection locations including a solid waste landfill site map and a discussion on sampling type (ground water, surface water, leachate, and field quality assurance/quality control) and corrective action system.
 - 4) Sampling collection protocols, including a discussion of any sampling deficiencies or problems specific to the sampling round;
 - 5) Quality Assurance/Quality Control (QA/QC) including; field QA/QC (field blanks, trip blanks, laboratory method blanks, sample blinds, duplicates, and field equipment calibration) data/results; laboratory QA/QC (VOC/SVOC surrogate recoveries) data/results and evaluations. The report shall state any field or laboratory problems which impacted the sampling results; and whether the QA/QC objectives were met.
 - 6) Analytical results including: estimate of surface water flow; field parameter measurements; field observation reports, low flow/low impact evaluation data, water elevations prior to sampling; analytical laboratory reports for metals, major ion concentrations, indicator parameters, and volatile and semi-volatile organics; all resample results and discussions; quality control data validation summary; sample chain of custody; a presentation of the analytical results for each sampling and parameter type by corrective action type; and a tabulation of all results by corrective action type and parameter; and
 - 7) Each quarterly report will evaluate the results against any established site specific baseline values or action levels, report whether or not there has been any detection of a test parameter not previously detected, and report whether or not there has been any detection of VOC, SVOC, and/or metals at any location.
- b. Annual Report. An annual report will be developed and presented each year. This report will compare past and present results, and discuss the trending analysis done and compare results at each location to any water quality baseline values and action levels and make recommendations for future sampling events.
- 1) The report will provide a description of the preceding year's data and its relationship to the historical data set.
 - 2) This Report shall trend and analyze the data at sample locations. Those sample locations with significant trends will be correlated with activities that have occurred at the solid waste facility over the preceding year. Water quality sampling locations that historically have had significant trends and did not have a significant trend during the preceding year will be correlated with changes that have occurred at the solid waste landfill. The data shall be evaluated to determine data impact on the historical trend and analyze the water quality data to determine if there is a relationship between the solid waste landfill location and the water levels; flow data from the leachate collection system; flow data from the corrective actions; and precipitation.
 - 3) The corrective action location(s) water quality data, if applicable, will be analyzed in conjunction with the hydraulic monitoring data to determine if water quality changes are due to a decrease in the quantity, duration, and peak flow of the leachate, and/or a lowering of the water levels within the waste pile or the systems themselves.

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4) Based on the analyses above, appropriate recommendations shall be made to change to the water quality monitoring program, hydraulic monitoring program, and corrective actions. These recommendations shall allow the water quality standards to be met and to better achieve reductions in the contaminated ground and surface water.

T. Recycling and Source Reduction. The operator shall make provisions for recycling and source reduction consistent with the most recent State recycling plan. A detailed recycling plan must be implemented and followed by the operator to ensure that the recycling operations are carried out in an organized, sanitary, and dependable manner.

U. Non-Recoverable Oily Waste. The disposal of non-recoverable oily waste shall be in accordance with the applicable requirements, governing disposal in solid waste landfills in ME Rules Chapter 405, Section 6.C.(3), which are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303.

V. Ash Disposal. The disposal of oil, coal, wood, multifuel boiler and incinerator ash shall be in accordance with the applicable requirements governing disposal in solid waste landfills in ME Rules Chapter 405, Section 6.C.(4), and ME Rules of Chapter 405.5 which are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-303.

PART 7

CLOSURE

Section

§9-701 Closure

§9-701 CLOSURE

A. Standard. In general, closure shall be accomplished in a manner which minimizes both the need for further maintenance and the post-closure formation and release of contaminants to the environment to the extent necessary to protect human health and the environment.

1. Solid Waste Landfill Closure Requirements. For the purposes of this subsection, the provisions of ME Rules Chapter 401, Section 5 and ME Rules Chapter 400, Section 11.A., are hereby adopted and incorporated herein by reference as modified in this Ordinance, including § 9-303, along with the following:

- a. The Closure Plan shall include, but not be limited to, information regarding the cover source operation which includes, but is not limited to, the following:
 - 1). A mining and reclamation plan, with appropriate timetables;
 - 2). A copy of the written notice to abutting property owners informing them of the intention to mine the cover material;

- 3). A letter of authorization from the property owner, if other than the Town of Jay;
- 4). Proposed measures to prevent soil erosion and to protect ground and surface water;
- 5). The location of any on-site or nearby roads, rivers, streams, brooks, great ponds or freshwater wetlands;
- 6). The exact location and limits of the mining activity, as indicated on a copy of a United States Geological Survey Map; and
- 7). A plan for the establishment and maintenance of buffer strips. The Board shall consider all relevant evidence concerning water bodies within or adjacent to the solid waste facility in determining whether they will be adequately protected from sedimentation and surface runoff by buffer strips.

PART 8

POST CLOSURE MONITORING AND MAINTENANCE

Section

§9-801 Post Closure Monitoring and Maintenance

§9-801 POST CLOSURE MONITORING AND MAINTENANCE

A. General Post Closure Monitoring and Maintenance Plan

1. Inspections. The solid waste landfill and beneficial use construction activities shall continue to be inspected in accordance with the approved Solid Waste Facility Operations Manual after closure until the Board approves a decrease in frequency or cessation of inspections. Deficiencies noted during inspections must be summarized along with corrective measures taken and be corrected as soon as weather conditions allow.

2. Cover Maintenance. The final cover for the solid waste landfill and beneficial use construction activities shall be maintained to prevent ponding of water, erosion of cover materials or otherwise to maintain integrity. Vegetative cover shall be mowed annually to prevent the growth of deep rooted, woody plant species. Animal burrows into the cover must be eliminated and shall be repaired as needed.

3. Drainage. Site work shall be performed as necessary to ensure that the closed handling site and wastewater lagoon site is kept well drained.

4. Restricted Access. The solid waste facility and beneficial use construction activity area shall be policed or other methods shall be provided to prevent the dumping of solid waste on the solid waste landfill and beneficial use construction activity area after closing.

B. Solid Waste Facility Post Closure Monitoring and Maintenance Plan. A post-closure monitoring and maintenance plan shall be submitted to the Board, as part of the the solid waste landfill closure plan required in § 9-701 of this Chapter, for review and approval at least 1 year

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before the start of any closing operations. For purposes of this subsection, the provisions of ME Rules Chapter 401, Section 6 and ME Rules Chapter 400., Section 11.A. , are hereby adopted and incorporated herein by reference, as modified in this Ordinance, including § 9-301, , along with the following:

- 1. Ground Water Monitoring.** Ground water shall continue to be monitored quarterly in accordance with § 9-602.S. after closure until the Board approves a decrease in monitoring frequency or parameters or both, or its discontinuance. Monitoring results shall be included in the post-closure inspection reports.
- 2. Surface Water Monitoring.** Surface waters shall continue to be monitored quarterly in accordance with § 9-602.S. after closure until the Board approves a decrease in monitoring frequency or parameters or both, or its discontinuance. Monitoring results shall be included in the post-closure inspection reports.
- 3. Gas Monitoring.** Gas monitoring must be conducted in accordance with the Gas Management Plan approved for the closure and post closure period under the requirement of § 9-701 and § 9-602.S. Gas vents, and other designed monitoring points, shall be monitored on a quarterly basis for the duration of post-closure care, unless directed otherwise by the Board. Monitoring results shall be included in the post-closure inspection reports.
- 4. Leachate Monitoring and Maintenance.** Leachate and the leachate management system must be monitored in accordance with the Leachate Management Plan for the closure and post-closure period approved under the requirements of § 9-701, § 602.J. and § 9-602.K. Leachate collection and treatment systems shall be regularly monitored and maintained after closure, as determined by the Board. Leachate quality and leak detection system monitoring shall continue to be monitored quarterly after closure until the Board approves a decrease in monitoring frequency or parameters or both, or its discontinuance. Monitoring results shall be included in the post-closure inspection reports. Provisions must be made for continued leachate removal and treatment until the Board approves a cessation in removal and treatment.

C. Post Closure Administration and Costs.

1. Administrative Requirements.

a. Post Closure Monitoring Inspection and Maintenance Report. The results of ground water and surface water quality, gas, slope stability, leachate, water quality, settlement and beneficial use construction activity monitoring along with solid waste landfill, drainage and beneficial use construction activities inspections and all drainage, leachate and cover maintenance shall be submitted to the Board quarterly or as determined by the Board based on the inspection and monitoring results. A monitoring and inspection report shall be submitted to the Board within 30 days after the end of each quarter and shall include all monitoring and inspection results and all maintenance activities specified in this Section.

2. Estimated Costs. A detailed estimate of the post-closure monitoring and maintenance costs shall be submitted to the Board with the post-closure monitoring and maintenance plan.

3. Long-Term Monitoring and Maintenance. Post-closure monitoring and maintenance shall be carried out for a minimum of 30 years or longer if required by the Board. Where

applicable, an escrow closure amount approved by MBEP or the Department shall be maintained to pay for the cost of post-closure monitoring and maintenance.

Fifth, Sec. 25. Sixth, Sec. 53. Twentieth, Sec. 11.

CHAPTER 12

WATER

Part

1. Short Title & Definitions
2. Prohibitions and Operations
3. Jay Water Permit
4. Water Quality Classification
5. WET Testing and Chemical - Specific Testing for Toxic Pollutants

Seventeenth, Sec. 71.

PART 1

SHORT TITLE AND DEFINITIONS

Section

§12-101 Short Title

§12-102 Definitions

§12-101 SHORT TITLE

This Chapter shall be known and may be cited as “**Jay Environmental Control and Improvement Ordinance-Water**”.

§12-102 DEFINITIONS

A. In addition to the terms defined in Chapter 1, in this Chapter, unless the context otherwise requires, the following words and phrases shall have the following meanings:

1. **Town:** “Town” means the Town of Jay, Franklin County, Maine.
2. **Discharge:** “Discharge” or “Discharge of a pollutant” means any spilling, leaking, pumping, pouring, emptying, dumping, disposing, or other addition of any pollutant to waters of the State located within the Town.
3. **Indirect Discharge:** “Indirect Discharge” means a Non-Domestic discharge of a pollutant to a publicly owned treatment works.

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4. Waters of the State: “Waters of the State” means any and all surface and subsurface waters which are contained within, flow through, or border upon the State of Maine or any portion thereof, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.

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

6. Point Source: “Point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture, agricultural storm water discharges, erosion related to agricultural activities, snow dump runoff, or runoff from road salt or road salt storage piles.

7. Federal Water Pollution Control Act: “Federal Water Pollution Control Act” means the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., as amended.

8. New Source: “New source” means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after enactment of this Ordinance.

9. Existing in-stream water uses. “Existing in-stream water uses” are those uses which have actually occurred on or after November 28, 1975, in or on a water body whether or not the uses are included in the standard of classification of the particular water body.

10. Color Pollution Unit. “Color Pollution Unit” means that measure of water color derived from comparison with a standard measure prepared according to the specifications of the current edition of “Standard Methods for Examination of Water and Wastewater,” adopted by the United States Environmental Protection Agency or an equivalent measure.

11. Pounds Per Ton. “Pounds per Ton” means the unit for measurement of color in the discharge from the production of wood pulp. The numerator of this unit is the product of the number of color pollution units multiplied by 8.34 multiplied by the volume of effluent discharged measured in millions of gallons. The denominator of this unit is measure in tons of actual production of unbleached wood pulp as measure on an air dried basis.

12. Toxic Pollutant: Toxic pollutant includes any pollutant listed as toxic under section 307(a)(1) of the Clean Water Act. Toxic pollutant also includes those substances or combination of substances, including disease agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism, including humans either directly through the environment or indirectly through ingestion through food chains, will, on the basis of information available to the Board either alone or in combination with other substances already in the receiving waters or the discharge, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in such organism or their offspring.

Sixth, Sec. 54. Eighth, Sec. 18. Seventeenth, Sec. 72. Twenty-First, Sec. 22.

PART 2
PROHIBITIONS AND OPERATIONS

Section

§12-201 Prohibitions

§12-202 Exemptions

§12-203 Monitoring

§12-204 Short-Term Noncompliance Reporting

Eighteenth, Sec. 18.

§12-201 PROHIBITIONS

No person shall directly or indirectly discharge or cause to be discharged from a point source any pollutant into the Waters of the State in the Town without first obtaining a Jay water permit from the Board.

§12-202 EXEMPTIONS

A Jay water permit is not required for residential discharges into the Livermore Falls or Jay Municipal Treatment Plants via the sanitary sewer system.

A Jay water permit is not required for commercial and industrial discharges into the Livermore Falls or Jay Municipal Treatment Plants via the sanitary sewer system, provided such discharges existed prior to the enactment of this Ordinance.

§12-203 MONITORING

Monitoring done by the permit holder, if requested by the Board, pursuant to Section 3-112, subsection F of this Ordinance, shall conform with test procedures specified in the permit. The Board may specify use of any of the following when appropriate or other generally accepted testing methods approved on a case by case basis:

- A. Sampling procedures and analytical procedures specified in M.D.E.P. Chapter 580, Regulations Relating to Sampling Procedures and Analytical Procedures, as amended, or
- B. The procedures specified in 40 CFR Part 136 as amended.

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In the absence of such procedures, testing shall be done in accordance with the procedures in 40 CFR Part 136 as amended and Chapter 3 of this Ordinance. Modifications to those procedures are permitted only after receiving written approval from the Board.

Sixth, Sec. 55. Thirteenth, Sec. 56.

§12-204 SHORT-TERM NONCOMPLIANCE REPORTING

In addition to reporting requirements set forth in Chapter 3, any person owning or operating a facility discharging pollutants to the waters of the State in the Town, shall notify the Board, Code Enforcement Officer or Jay Police Dispatcher by telephone or in person within four (4) hours, and in writing within 48 hours, unless specified otherwise in a Jay Water Permit, in the event that there is noncompliance with any applicable effluent limitation or discharge standard. The written communication shall include:

- a. A description and quantification of the noncompliance and its cause;
- b. Period of noncompliance, including exact date and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance.

Tenth, Sec. 33. Eighteenth, Sec. 19.

PART 3

JAY WATER PERMIT

Section

- §12-301 Jay Water Permit Application
- §12-302 Conditions in Jay Water Permit
- §12-303 Certain Deposits and Discharges Prohibited

Twentieth, Sec. 12.

§12-301 JAY WATER PERMIT APPLICATION

A. Application

- 1. Existing sources, new sources and modifications.** Application for a first time Jay Water Permit for an existing source and applications for a Jay Water Permit for a new source or for a

modification shall be made in accordance with Chapter 3 of this Ordinance and contain such additional information relating to the discharge as required by this section.

The applicant shall submit the following information:

- a. The activities conducted by the applicant which require it to obtain a permit;
- b. The name, mailing address, and location of the facility for which the application is submitted;
- c. The operator's name, address, telephone number, ownership status, and status as federal, state, municipal, public, private, or other entity;
- d. A listing of all permits or construction approvals previously received or applied for under any federal, state, local, or other permitting program;
- e. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage or disposal facilities; and those wells, springs, other surface water bodies, and drinking water wells listed in public records, or otherwise known to the applicant in the map area;
- f. A brief description of the nature of the business;
- g. A line drawing of the water flow through the facility with a water balance;
- h. An engineering narrative identifying each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, stormwater runoff, filter backwash, boiler blowdown, and sanitary flow; the average flow each process contributes; and management practices which minimize the volume of wastewater that needs to be discharged;
- i. Hydraulic and process flow diagrams of the discharger's existing or proposed wastewater facility complete with solids balance;
- j. An analysis of the effluent characteristics including, where appropriate, quantitative data (a sample analyzed in accordance with the analytical methods approved under 40 CFR part 136 as amended) or other generally accepted testing method approved by the Board on a case by case basis;
- k. Results of all monitoring required by any state or federal license(s) or permit(s);
- l. Operating and maintenance records of each process, operation or production area which contributes waste water to the effluent of each outfall;
- m. Records documenting spills, accidental discharges and all other unlicensed discharges and releases;
- n. A description of the treatment the wastewater received, treatment system maintenance procedures and management practices which minimize pollutant load to the receiving waters;

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- o. An analysis of any sludges produced by the existing and/or proposed wastewater facility and a description of the disposal methods to be employed;
- p. A plan view and elevations showing the position of each outfall relative to any buildings, the receiving waters and surrounding terrain; and a description of the outfalls and diffusers to which each discharge is directed;
- q. A description of existing populations of aquatic life, plant life and wildlife which make use of or reside in the receiving waters and a description of the existing human uses of the receiving waters;
- r. A demonstration that the discharge will not threaten the existence of, or impair the growth and reproduction of the existing aquatic life, plant life and wildlife populations and a demonstration that the discharge will not adversely impact existing human uses;
- s. Whole Effluent Toxicity (WET) testing and chemical-specific testing data as set forth in Part 5; and
- t. A description of on-going or planned pollution prevention or reduction programs that may impact the characteristics of the waste water effluent.

2. Renewals. Any person seeking to renew a Jay Water Permit shall file an application at least 180 days before the expiration date of the permit. Application for renewal of a Jay Water Permit shall be made in accordance with Chapter 3 of this Ordinance and contain such additional information relating to the discharge as required by this section.

The applicant shall submit the following information:

- a. Any changes to the information submitted in the previous application for a Jay Water Permit necessary to make the information current and accurate;
- b. For the previous five years, results of all monitoring required by any state or federal license(s) or permit(s);
- c. For the previous five years, operating and maintenance records of each process, operation or production area which contributes waste water to the effluent for each outfall;
- d. For the previous five years, records documenting spills, accidental discharges and all other unlicensed discharges and releases;
- e. For the previous five years, any process or water flow changes;
- f. WET testing and chemical-specific testing data as set forth in Part 5; and
- g. A description of the impacts of any pollution prevention or reduction programs on the characteristics of the wastewater effluent and any planned pollution prevention or reduction programs.

B. Acceptability. An application for a Jay water permit shall not be deemed acceptable for processing until all information and data required to evaluate the application have been submitted. The fact that an application is deemed acceptable for processing does not prohibit the Board from requesting further relevant information and data deemed necessary to evaluate the permit application.

C. Term of Jay Water Permit. Permits shall be issued by the Board for a term of not more than 5 years.

E. Criteria for Granting a Permit.

1. Any new or existing pulp, paper, or paperboard mill that discharges or may discharge process wastewater pollutants will be subject to effluent limitations which represent the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT). At a minimum, new and existing discharges will not violate any applicable BAT effluent limitations adopted by the United States Environmental Protection Agency pursuant to the terms of the Federal Water Pollution Control Act, as amended, (40 C.F.R. Part 430 and Appendices).

a. The discharge either by itself or in combination with other discharges will not lower the standards of classification of the water body below such classification;

a-1. The discharge either by itself or in combination with other discharges will allow existing in-stream water uses to be maintained and protected;

b. Where the actual quality of any classified water exceeds the minimum standards of the next highest classification, that higher water quality shall be maintained and protected;

c. Where the discharge, either by itself or in combination with other discharges, will lower the existing quality of any body of water within its classification, the Board may only issue a permit if it finds, after opportunity for public participation, that the discharge is necessary to achieve important economic or social benefits. In no event shall the Board permit a discharge which would impair the quality of such water to a level below that allowed by the M.D.E.P. or the United States Environmental Protection Agency or be inconsistent with other provisions of this Ordinance;

c-1. The Board may issue a permit for a discharge affecting a water body in which the standards of classification are not met if the discharge does not cause or contribute to the failure of the water body to meet the standards of classification;

d. The discharge will be subject to effluent limitations which require application of the best practicable treatment. "Effluent limitations" means any restriction or prohibition including, but not limited to, effluent limitations, standards of performance for new sources, toxic effluent standards and other discharge criteria regulating rates, quantities and concentrations of physical, chemical, biological and other constituents which are discharged directly or indirectly into waters in the Town of Jay. "Best practicable treatment" means the methods of reduction, treatment, control and handling of pollutants, including process methods, and the application of best conventional pollutant control technology or best available technology economically achievable, for a category or class of discharge sources which the Board determines are best calculated to protect and improve the quality of the receiving water. In

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determining best practicable treatment for each such category or class, the Board shall consider the then existing state of technology, the effectiveness of the available alternatives for control of the type of discharge and the economic feasibility of such alternatives. At a minimum, the discharge will not violate any applicable effluent limitation guidelines adopted by the United States Environmental Protection Agency pursuant to the terms of the Federal Water Pollution Control Act, as amended. (40 C.F.R. Parts 129, 401, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 439, 440, 443, 446, 447, 454, 455, 457, 458, 459, 460, 461, 463, 464, 465, 466, 467, 468, 469, 471);

e. The discharge will not violate the provisions of any federal or state laws or regulations enacted pursuant thereto relating to water pollution control or water quality classification and will not violate the terms of any current license issued by the M.D.E.P. for the discharge;

f. The discharge will not impart color, heat, taste, turbidity, toxicity, radioactivity, or other properties which cause the waters to be unsuitable for the designated uses, existing uses, or characteristics of their classification;

g. The discharge will not cause the pH of fresh waters to fall outside the 6.0 to 8.5 range;

h. For purposes of whether the water quality criteria of Section 12-301(E)(1) will be met discharges of color pollutants from the kraft pulping process must meet the following standards:

(1) Discharges licensed and in existence prior to July 1, 1989 must meet:

- (a) 225 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis until December 31, 2000; or
- (b) 150 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis on or after January 1, 2001.

(2) Discharges licensed for the first time after July 1, 1989 must meet 150 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis.

(3) An individual waste discharge with flows greater than the minimum 30-day low flow that can be expected to occur with a frequency of once in 10 years may not increase the color of any water body by more than 20 color pollution units. The total increase in color pollution units caused by all waste discharges to the water body must be less than 40 color pollution units. A discharge meeting this standard is exempt from subparagraph (1), above, so long as that discharge also does not exceed 175 pounds of color pollutants per ton of unbleached pulp produced after January 1, 2001.

i. The discharge will not take place into waters having a drainage area of less than 10 square miles, except that discharges into these waters which were licensed prior to January 1, 1986, shall be allowed to continue only until practical alternatives exist;

j. The discharge will not be a new direct discharge of domestic pollutants to tributaries of Class-GPA waters;

k. The discharge, if into a tributary of GPA waters, will not by itself or in combination with other activities, cause water quality degradation which would impair the characteristics and designated uses of downstream GPA waters or cause an increase in the trophic state of those GPA waters;

l. A new or increased discharge of domestic pollutants to the surface waters of the state, will be conveyed to and treated in the Jay Municipal Treatment Plant or the Livermore Falls Municipal Treatment Plant.

1-A. For the purpose of determining whether a discharge will violate the classification of any river or stream, the discharge need not be completely mixed with the receiving water, however a reasonable opportunity for dilution, diffusion or mixture with the receiving waters or heat transfer to the atmosphere shall be provided.

The Board may establish a limited area or volume of water where initial dilution of a discharge takes place, or mixing zone, at the time of application for a waste discharge permit. In making any such determination, the Board shall ensure that:

1. the mixing zone does not impair the classification of the water body as a whole;
2. there is no lethality to organisms passing through the mixing zone;
3. there are no significant health risks, considering likely pathways of exposure;
4. the zone of passage is maintained; and
5. the assimilative capacity of the receiving water in conjunction with the characteristics of the effluent are taken into consideration.

2. In addition to the criteria contained in Section 12-301(E)(1), the following standards must be satisfied:

a. Assimilative Capacity Used to Determine Whether the Water Quality Criteria of Section 12-301(E)(1) will be met.

(1) Rivers and Streams: For the purposes of computing whether a discharge will violate the classification of any river or stream, the assimilative capacity of such river or stream shall be computed using the minimum seven day low flow which occurs once in ten years. Waste discharges shall be appropriately reduced when flows fall below the seven day ten year low flow if the Board determines that such reduction is necessary to maintain the applicable classifications.

(2) Great Ponds: The hydraulic residence time will be used to compute the assimilative capacity of great ponds. Hydraulic residence time will be computed by dividing lake volume by the product of watershed area and the precipitation runoff coefficient.

b. Zone of Passage Used to Determine Whether the Water Quality Criteria of Section 12-301(E)(1) will be met.

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All discharges of pollutants shall, at a minimum, provide for a zone of passage for free-swimming and drifting organisms. The zone shall not be less than 3/4 of the cross-sectional area at any point in the receiving body of water. Such zone of passage may be reduced whenever the applicant for a discharge can demonstrate that (a) because of physical phenomena in the receiving body of water such minimum zone cannot be maintained and (b) such minimum zone of passage is not necessary to protect organisms in the receiving water from substantial adverse effects, provided that such a reduction does not violate state or federal law or the terms of the discharge license issued by the M.D.E.P. to the applicant.

c. Great Ponds Trophic State Used to Determine Whether the Water Quality Criteria of Section 12-301(E)(1) generally and Section 12-301(E)(1)(e) will be met.

(1) Trophic state is the ability of a body of water to produce algae and other aquatic plants. The trophic state of a body of water is a function of its nutrient content and may be estimated using the Maine Trophic State Index (TSI) as follows:

All Lakes

$$\text{TSI} = 70 \log (\text{mean chlorophyll } a + 0.7)$$

Lakes with water color SPU

$$\text{TSI} = 70 \log (.33 \text{ mean total phosphorus} + 0.7) \text{ or,}$$

$$\text{TSI} = 70 \log \left(\frac{\text{mean Secchi disk}}{105} + 0.7 \right)$$

(2) Algal bloom-An algal bloom is defined as a planktonic growth of algae which causes Secchi disk transparency to be less than 2.0 meters.

(3) Stable or decreasing trophic state-A GPA water shall be considered to have stable or declining trophic state unless it exhibits (a) a perceivable and sustained increase in its trophic state as characterized by its Trophic State Index or other appropriate indices, or (b) the onset of algal blooms.

d. Temperature Standards Used to Determine Whether the Water Quality Criteria of Section 12-301(E)(1) generally and Section 12-301(E)(1)(f) will be met.

No discharge of pollutants shall cause the ambient temperature of the receiving waters to be raised more than 5 degrees Fahrenheit or more than 3 degrees Fahrenheit in the epilimnion of any lake or pond. In no event shall any discharge cause the temperature of the receiving water to exceed 85 degrees Fahrenheit, nor shall such discharge cause the temperature of any waters to exceed the United States Environmental Protection Agency's National Ambient Water Quality Criteria established to protect all species of fish that are indigenous to the receiving waters. Site specific criteria, generated from a study conducted according to DEP approved methods for indigenous species of fish may be substituted for national ambient water quality criteria, so long as the site specific criteria are not less protective of species found to be indigenous to those waters, and so long as the public participation requirements of federal, state and local law are met. When the ambient temperature of any body of water

naturally exceeds the limits set forth in this section, no thermal discharge may be allowed which alone or in combination with other discharges would raise the ambient temperature of the receiving water more than 0.5 Degrees Fahrenheit above the temperature.

e. Water Quality Criteria for Toxic Pollutants Used to Determine Whether the Water Quality Criteria of Section 12-301(E) will be met.

(1) Except as naturally occurs, and in the absence of any specific requirement or standard in this Chapter, ambient levels of toxic pollutants shall not exceed (a) federal water quality criteria as adopted by the United States Environmental Protection Agency under Section 304(a) of the Clean Water Act, (b) state water quality criteria for toxic pollutants, adopted by the M.D.E.P. on a statewide alternative basis pursuant to 38 M.R.S.A. Section 420(2)(B), (c) site specific numerical criteria adopted by the M.D.E.P. pursuant to 38 M.R.S.A. Section 420(2)(B), or (d) statewide numerical criteria or site-specific numerical criteria adopted by the M.D.E.P. pursuant to 38 M.R.S.A. Section 420(C). The Board shall apply relevant criteria and cancer risk level adopted by the M.D.E.P. and shall apply federal criterion and cancer risk level only in the absence of state criteria and cancer risk level.

(2) Limits Required

The Board shall establish appropriate discharge prohibitions, effluent limitations and monitoring requirements in waste discharge permits as needed to control the level of toxic pollutants in surface waters. Appropriate water quality based on effluent limits must be established in the permit if a discharge contains pollutants that are, or may be discharged at levels that cause, have a reasonable potential to cause, or contribute to an ambient exceedence in excess of a numeric or narrative water quality criterion. The permit must also contain appropriate effluent limits to control whole effluent toxicity when discharges cause, have a reasonable potential to cause or contribute to an ambient excursion above the narrative water quality criterion. The whole effluent toxicity limit is the no observed effect level (NOEL). The NOEL (in percent effluent) must be greater than the receiving water concentrations (RWC) (in percent effluent) at the appropriate design flows for both acute (A) and chronic (C) exposures.

$$A\text{-NOEL} > A\text{-RWC}$$

$$C\text{-NOEL} > C\text{-RWC}$$

(3) Determination of Exceedence of Criteria

The Board will review all testing data as received. If these data indicate that the discharge is causing an exceedence of applicable water quality criteria, then: (a) the Board must notify the permit holder of the exceedence; (b) the permit holder must submit a toxics reduction evaluation (TRE) plan for review and approval within 30 days of receipt of notice and implement the TRE plan after Board approval; (c) the Board may modify the waste discharge permit to specify effluent limitations and monitoring requirements necessary to control the level of pollutants at levels meeting receiving water classification standards within 180 days of the Board's approval of the TRE plan.

(4) Water Quality-based Effluent Limit Derivation

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Water quality-based limits must be developed by one or both of the following procedures:

a. Specific pollutant approach

When specific toxic pollutants of known action and interaction are identified in a discharge or potential discharge, the water quality-based effluent limit is determined by use of the applicable numerical water quality criteria for the pollutants and the appropriate dilution.

b. Whole effluent approach

When the existing or proposed discharge contains two or more pollutants whose actions or interactions are unknown or when toxic components cannot be identified, WET effluent limits may be required for the protection of aquatic life. The “acute no observed effect level” (A-NOEL) and the “chronic no observed effect level” (C-NOEL), expressed as percent effluent, must be greater than the actual receiving water concentrations (% of effluent in receiving water at the appropriate stream design flow).

c. Calculation of dilution factors

A simple dilution model using stream design flows must be used to determine allowable effluent limits unless there is information that makes another model approved by the Board more appropriate. Background concentrations will be included in all calculations, using available site data or other data appropriate for the region.

Dilution factors (DF) for freshwater discharges are calculated using the following models:

- (i) If the entire water supply that ultimately makes up the effluent flow (Q_e) is taken from the receiving water upstream of the location from which the stream design flow (Q_r) is calculated or measures, then:

$$DF = Q_r/Q_e$$

- (ii) If part or all of the water supply is taken from any other location (Q_o) is discharged in the effluent, then:

$$DF = (Q_r + Q_o)/Q_e$$

d. Stream design flows

Stream design flows used in the analyses of dilution factors from dilution models must be consistent with the exposure of the population at risk to any and all toxic pollutants and shall utilize, when applicable, state and federal guidance.

f. Criteria for Fish and Salmonid Spawning Areas Used to Determine Whether the Water Quality Criteria of Section 12-301(E)(1) will be met.

(1) In Class B waters that have been identified as fish spawning areas, no activity may cause the dissolved oxygen concentration to fall below a 7 day mean of 9.5 parts per million or a 1 day minimum of 8.0 parts per million during the period October 1 to May 14 of the following year.

(2) In Class C waters identified as salmonid spawning areas and in which the dissolved oxygen exceeds United States Environmental Protection Agency criteria for salmonid spawning, no activity may cause the dissolved oxygen in these areas to fall below United States Environmental Protection Agency criteria for spawning for the period October 1 to May 14 of the following year.

(3) Methods of identification of spawning areas: The Board shall consider as spawning areas all such areas identified by the Commissioner of Inland Fisheries and Wildlife and the M.D.E.P. in connection with the most recent licensing or relicensing of the discharge. The Board shall request the Commissioner of Inland Fisheries and Wildlife to identify additional areas using the following methods:

(a) Identification of areas observed by fishery biologists as being utilized by any of these species for spawning;

(b) Identification of areas as spawning habitat in habitat inventories, river reports or state agency files;

(c) Identification of research findings for the same species in other geographical area from scientific literature and Habitat Suitability Models for presently existing species;

(d) Identification based upon professional opinion of a certified fishery biologist experiences in salmonid ecology. The Board may identify areas in addition to those identified by the Commissioner of Inland Fisheries and Wildlife using methods (a), (b), (c) and (d) above.

g. Maintenance and Protection of Existing In-stream Uses Used to Determine Whether the Water Quality Criteria of Section 12-301(E)(1) generally and Section 12-301(E)(1)(a-1) will be met.

(1) When existing in-stream use involves use of the water body by a population of plant life, wildlife or aquatic life or as aquatic, wildlife or plant habitat, the applicant must demonstrate that the proposed activity would not have a significant impact on the existing use. "Significant impact" means impairing the viability of the existing population, including significant impairment to growth and reproduction or an alteration of the habitat which impairs viability of the existing population; or

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(2) When the existing in-stream use involves use of the water body for recreation in or on the water, fishing, water supply or commercial enterprises that depend directly on the preservation of any existing level of water quality, the applicant must demonstrate that the proposed activity would not result in significant degradation of the existing use.

(3) The Board shall determine what constitutes a population of a particular species based on the degree of geographic and reproductive isolation from other individuals of the same species.

(4) The Board shall determine what constitutes an existing in-stream water use on a case-by-case basis. The Board shall consider as an existing in-stream use all uses identified as such by the M.D.E.P. or the United States Environmental Protection Agency in connection with the most recent licensing or relicensing of the discharge. The Board shall determine whether any additional uses constitute existing in-stream water uses by considering;

(a) Designated uses for the water body;

(b) Aquatic life present in the water body;

(c) Wildlife that utilize the water body;

(d) The use of the water body for recreation in or on the water, fishing, water supply, or commercial activity that depends directly on the preservation of an existing level of water quality. Use of the water body to receive or transport waste water discharges is not considered an existing use;

(e) Any other evidence which, for subsections (a), (b) and (c), demonstrates their ecological significance because of their role or importance in the functioning of the ecosystem or their rarity and, for subsection (d), demonstrates its historical or social significance.

h. Color Pollution Control Used to Determine Whether the Water Quality Criteria of Section 12-301(E)(1) will be met.

By April 1, 1994, discharges from kraft pulp mills must meet the following standards:

(1) Best practicable treatment.

(a) For discharges licensed and in existence prior to July 1, 1989, 225 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis; and

(b) For discharges licensed for the first time after July 1, 1989, 150 pounds or less of color pollutants per ton of unbleached pulp produced, measured on a quarterly average basis; or

(2) Instream color pollution standard. An individual waste discharge may not increase the color of any water body by more than 20 color pollution units. The total increase in color pollution units caused by all waste discharges to the water body must be less than 40 color pollution units. Color increases are measured on a calendar quarterly basis.

First, Sec. 75, 76, 77, 78, 79 and 80. Fifth, Sec. 26. Sixth, Sec. 56, 57, 58, 59 and 60. Eighth, Sec. 19, 20, 21, 22, 23, and 24. Ninth, Sec. 7. Eleventh, Sec. 15. Seventeenth, Sec. 75, 76, 77, 78, 79, 80, 81, 82 and 83. Eighteenth, Sec. 20. Twentieth, Sec. 13, 14, 15 and 17. Twenty-Second, Sec. 40 and 41

§12-302 CONDITIONS IN JAY WATER PERMIT

The Board may impose any condition(s) which it deems appropriate and reasonable to ensure compliance with effluent limitation and water quality standards and with this Ordinance. In addition to any such conditions imposed by the Board, every Jay Water Permit shall be subject to the following standard conditions and the conditions set forth in Chapter 3:

- A. Employees and authorized representatives of the Town of Jay shall be allowed during normal business hours the right of entry to, upon or through any premises in which an effluent source is located or in which any records required under Chapter 3 or by the Board to be maintained are located, and shall be allowed to perform tests and inspections and examine and copy all records relating to discharges.
- B. The permit holder shall comply with effluent limitations, water quality standards, State laws and regulations, Federal laws and regulations, and this Ordinance.
- C. The permit holder shall take all reasonable steps to minimize or prevent any discharge in violation of such permit which discharge has a reasonable likelihood of adversely affecting human health or the environment.
- D. The permit holder shall maintain records of all water pollution prevention control equipment malfunctions, failures and downtime as well as records of any changes or malfunction of the effluent sources which would create above normal effluent discharges.
- E. Any permit maybe modified, revoked, reissued, or terminated for cause. The filing of a request by the permit holder for modification, revocation and reissuance, or termination or a notification of planned changes or anticipated non-compliance does not stay any permit condition.
- F. The permit holder shall furnish to the Board, within a reasonable period of time any information which the Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating such permit or to determine compliance therewith. The permit holder shall also furnish to the Board, upon request, copies of all records required by such permit to be kept.
- G. The permit shall contain applicable WET Testing and Chemical-Specific Testing for Toxic Pollutants and applicable effluent limits, discharge prohibitions or other monitoring requirements.

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H. The permit may contain a requirement for reporting of pollution prevention or reduction programs.

First, Sec. 81. Tenth, Sec. 34. Fourteenth, Sec. 15. Seventeenth, Sec. 84.

§12-303 CERTAIN DEPOSITS AND DISCHARGES PROHIBITED

A. Notwithstanding any other provision of this Chapter, no Person shall discharge into the ground water, surface waters, or on the ice thereof, or on the banks thereof so that the same may flow or be washed into such waters, or in such a manner that the drainage therefrom may flow into such waters of the Town of Jay, any of the following substances:

1. Dioxin.

a. After July 31, 1998, a bleach kraft pulp mill may not have a detectable quantity of 2,3,7,8-tetrachlorodibenzo-p-dioxin as measured in any internal waste stream of its bleach plant. The detection level is 10 picograms per liter, unless the Board adopts a lower level by order or a lower detection level is used by the Department of Environmental Protection or the United States Environmental Protection Agency.

b. After December 31, 1999, a bleach kraft pulp mill may not have a detectable quantity of 2,3,7,8-tetrachlorodibenzo-p-furan as measured in any internal waste stream of its bleach plant. The Board may extend this time frame up to six months for a mill if the Board determines, based on information presented by the mill, that compliance is not achievable by the deadline due to engineering constraints, availability of equipment or other justifiable technical reasons. The detection level is 10 picograms per liter, unless the Board adopts a lower level by order or a lower detection level is used by the Department of Environmental Protection or the United States Environmental Protection Agency. If a mill fails to achieve this requirements, as documented by confirmatory sampling, it shall conduct a site-specific evaluation of feasible technologies or measures to achieve it. This evaluation must be submitted to the Board within 6 months of the date of the confirmatory sampling and include a timetable for implementation, acceptance to the Board, with an implementation date no later than December 31, 2002. The Board may establish a procedure for a confirmatory sampling.

c. After December 31, 2002, a bleach kraft pulp mill may not discharge dioxin into its receiving waters. A bleach kraft pulp mill is considered to have discharged dioxin into its receiving waters if 2,3,7,8-p-tetrachlorodibenzo-p-dioxin or 2,3,7,8-tetrachlorodibenzo-p-furan is detected in any of the mill's internal waste streams of its bleach plant or if levels of dioxin, as defined in 38 MRSA section 420-A, subsection 1, detected in fish tissue sampled below the mill's wastewater outfall are higher than levels in fish tissue sampled at an upstream reference site not affected by the mill's discharge or on the basis of a comparable surrogate procedure approved by the Board. The detection level is 10 picograms per liter, unless the Board adopts a lower level by order or a lower detection level is used by the Department of Environmental Protection or the United States Environmental Protection Agency. The fish-tissue sampling test must be performed with differences between the average concentrations of dioxin in the fish samples taken upstream and downstream from the mill measured with at least 95% statistical confidence. If the mill fails to meet the fish-

tissue sampling-result requirements in this subparagraph and does not demonstrate by December 31, 2004 to the Board's satisfaction that its wastewater discharge is not the source of elevated dioxin concentrations in fish below the mill, then the Board may pursue any remedy authorized by law.

d. The internal waste stream of a bleach plant subject to this sub-section must be sampled twice per quarter by the mill. The Board may conduct its own sampling and analysis of the internal waste stream of a bleach plant. Analysis of the samples must be conducted by a 3rd-party laboratory using methodology approved by the United States Environmental Protection Agency. A mill shall report to the Board the actual laboratory results including sample detection limits on a frequency to be established by the Board. The Board shall assess the mill for the costs of any sampling performed by the Board and any analysis performed for the Board. The Board may reduce the frequency of sampling after 3 consecutive years of sampling have demonstrated the mill does not have a detectable quantity of 2,3,7,8-tetrachlorodibenzo-p-dioxin or 2,3,7,8-tetrachlorodibenzo-p-furan.

2. Radiological, chemical or biological warfare agents.

Radiological, chemical or biological warfare agents or high level radioactive wastes may not be discharged.

3. Toxic or pollutants and substances.

Any other Toxic Pollutants and Substances in any amount or concentration greater than that identified or regulated, including complete prohibition of such substance by the Board.

B. Mercury

No Person shall discharge amounts of mercury that would cause or contribute to receiving water concentrations of mercury that exceed any water quality criteria as developed by the EPA pursuant to section 304(a) of the Clean Water Act.

Twentieth, Sec. 16. Twenty-First, Sec. 23, 24, 25 and 26.

PART 4
WATER QUALITY CLASSIFICATION

Section

§12-401 Water Quality Classification

§12-401 WATER QUALITY CLASSIFICATION

The Town adopts the water classification program and standards adopted by the State of Maine pursuant to 38 M.R.S.A. Sections 465(3), 465(4), 465-A, 466, 467(1), 468 as amended, as the classifications for the Waters of the State in the Town.

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First, Sec. 82. Fifth, Sec. 27. Sixth, Sec. 61. Eleventh, Sec. 16.

PART 5

WET TESTING AND CHEMICAL-SPECIFIC TESTING FOR TOXIC POLLUTANTS.

Section

- §12-501 Applicability
- §12-502 General Requirements
- §12-503 Testing Frequency for Permitted Discharges
- §12-504 Test Organisms
- §12-505 Chemical Specific Testing
- §12-506 Test Schedules
- §12-507 Modified Testing Requirements

Seventeenth, Sec. 85. Twenty-Second, Sec. 42.

§12-501 APPLICABILITY

All industrial dischargers of process wastewater and all publicly operated treatment works (POTWs) discharging to surface waters within the Town of Jay must meet the requirements of this Part. Dischargers of other types of wastewater are subject to this Part when and if the Board determines that toxicity of their effluents may cause or have reasonable potential to cause or contribute to exceedences of narrative or numerical water quality criteria.

Seventeenth, Sec. 85.

§12-502 GENERAL REQUIREMENTS

A. In order to characterize the effluent discharged for purposes of a new waste discharge permit or for a permit renewal all subject dischargers must carry out a toxicity testing program consisting of screening tests and surveillance tests. This testing program must be conducted on effluents representative of normal operating conditions. Where any test demonstrates that a discharge may cause or contribute to an exceedence of a numerical or narrative water quality criterion additional testing must be conducted in accordance with a Board approved toxicity reduction program.

B. Screening tests must be performed during the 12 months preceding each application for a new permit or permit renewal or at least once every 5 years unless directed by the Board. More frequent

testing may be required by the Board in order to properly characterize a discharge in consideration of changed conditions or receiving water requirements. All relevant data available must be submitted at time of permit application. All remaining data necessary for completion of the required program must be submitted within 30 days of collection unless otherwise specified by the Board.

C. Where screening tests demonstrate that a discharge does not cause, have a reasonable potential to cause, or contribute to an exceedence of a numerical or narrative water quality criterion, surveillance tests must be conducted until screening tests are repeated prior to the next permit renewal.

Seventeenth, Sec. 85. Twenty-Second, Sec. 43 and 44.

§12-503 TESTING FREQUENCY FOR PERMITTED DISCHARGES

A. The basis of this categorization is the relative risk of toxic contamination of receiving water by a discharge. Dilution of the discharge in the receiving water is the primary variable used to determine the testing frequency. In determining dilution for a discharge, the Department shall use the chronic dilution factor as calculated pursuant to 12-301.E.2.e.(5).c. The Board may assign a discharger to a higher testing frequency level if its outfall configuration or local conditions indicate a disproportional increase in the risk of acute toxic effects.

1. Level I - Those dischargers having a chronic dilution factor of less than 20 to 1.
2. Level II - Those dischargers having a chronic dilution factor of at least 20 but less than 100 to 1.
3. Level III - Those dischargers having a chronic dilution factor of at least 100 but less than 500 to 1, or dischargers having a chronic dilution factor of more than 500 to 1 and a permitted flow of 1 million gallons per day or greater.
4. Level IV - Those dischargers having a chronic dilution factor of at least 500 to 1 and a permitted flow of less than 1 million gallons per day.

Screening Level Testing

Level	WET Testing	Priority Pollutant Testing	Analytical Chemistry
I	4 per year	1 per year	4 per year
II	2 per year	1 per year	4 per year
III	1 per year	1 per year	4 per year
IV	1 per year *	1 per year *	4 per year*

Surveillance Level Testing

Level	WET Testing	Priority Pollutant Testing	Analytical Chemistry
I	2 per year	None required	4 per year
II	1 per year	None required	2 per year
III	1 per year	None required	1 per year

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IV 1 per year * None required * 1 per year *

*Level IV tests are waived, except that the Board shall require an individual discharger to conduct testing if:

1. The discharger's permit application or information available indicates that toxic compounds may be present in toxic amounts; or
2. Previous testing conducted by the discharger or similar dischargers indicates that toxic compounds may be present in toxic amounts.

B. Required testing must be representative of the discharge and any seasonal or other variations, and must be distributed during the year as follows.

Tests per year	Distribution
4	One test each calendar quarter
2	One test in January to June and one test 6 months later. For surveillance tests, different months will be used in 4 successive years.
1	For surveillance tests, different calendar quarters will be used in 4 successive years.

Seventeenth, Sec. 85. Eighteenth, Sec. 21. Twenty-Second, Sec. 45.

§12-504 TEST ORGANISMS

A. Freshwater WET organisms.

Test species for discharges to freshwater are the water flea, *Ceriodaphnia dubia* and the brook trout, *Salvelinus fontinalis* or other salmonid fish species approved by the Board, or other organisms specified by the Board. All WET testing must be reported as a No Observed Effect Level for both acute and chronic levels for each species.

B. The water flea, *Ceriodaphnia dubia* shall be used for all surveillance level testing. The water flea, *Ceriodaphnia dubia* and the brook trout, *Salvelinus fontinalis* or other salmonid fish species approved by the Board, or other organisms specified by the Board shall be used for all screening level testing.

C. WET Testing Procedures.

WET tests must be conducted by an experienced laboratory approved by the Maine Department of Environmental Protection. The laboratory must follow the procedures described in the following USEPA methods manuals, except as modified by the Board on a case by case basis or as described in this section for the Salmonid Survival and Growth Test.

1. EPA Methods Manuals

U.S. Environmental Protection Agency. 2002. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, 5th ed. EPA 821-R-02-012. U.S. Environmental Protection Agency, Office of Water, Washington, D.C., October 2002 (the acute method manual)

U.S. Environmental Protection Agency. 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, 4th ed. EPA 821-R-02-013. U.S. Environmental Protection Agency, Office of Water, Washington, D.C., October 2002 (the freshwater chronic method manual)

U.S. Environmental Protection Agency. 2002. Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms, 3rd ed. EPA 821-R-02-014. U.S. Environmental Protection Agency, Office of Water, Washington, D.C., October 2002 (the marine chronic method manual)

2. Salmonid Survival and Growth Test.

The Salmonid survival and growth test must follow the procedures for the fathead minnow larval survival and growth tests detailed in USEPA's freshwater acute and chronic methods manuals (see references above) with the following modifications:

Species - Brook Trout, *Salvelinus fontinalis*, or other salmonid approved by the Department.

Age - Less than six months old for the first test each year and less than twelve months for subsequent tests.

Size - The largest fish must not be greater than 150% of the smallest.

Loading Rate - < 0.5 g/l/day

Feeding rate - 5% of body weight 3 times daily (15%/day)

Temperature - $12^{\circ} \pm 1^{\circ}\text{C}$

Dissolved Oxygen - 6.5 mg/l ,aeration if needed with large bubbles (> 1 mm diameter) at a rate of <100/min

Dilution Water - Receiving water upstream of discharge (or other ambient water approved by the Board)

Dilution Series - A minimum of 5 effluent concentrations (including the instream waste concentrations bracketing acute and chronic dilutions); a receiving water control; and control of known suitable water quality

Duration - Acute = 48 hours
 - Chronic = 10 days minimum

Test acceptability - Acute = minimum of 90% survival in 2 days

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- Chronic = minimum of 80% survival in 10 days; minimum growth of 20 mg/gm/d dry weight in controls, (individual fish weighed, dried at 100°C to constant weight and weighed to 3 significant figures)"

Seventeenth, Sec. 85. Twenty-Second, Sec. 46.

§12-505 CHEMICAL SPECIFIC TESTING

A. Chemical specific testing refers to analysis for levels of priority pollutants (promulgated according to Section 307 (a) of the CWA) in a permitted discharge. Chemical specific testing also includes "Analytical Chemistry" which refers to a suite of chemical tests for ammonia nitrogen, total aluminum, total cadmium, total chromium, total copper, total hardness, total lead, total nickel, total silver, total zinc, total arsenic, total cyanide and total residual chlorine.

B. Chemical specific analysis for toxic pollutants in addition to the priority pollutants will also be required if the Board has reason to believe that specific discharges contain such compounds in concentrations that may prevent attainment of water quality standards of the waterbody.

C. All chemical-specific testing must be carried out by methods that permit detection of a pollutant at existing levels in the discharge or that achieve minimum levels of detection as specified by the Board.

D. Whenever WET tests and chemical specific tests are both required, tests must be performed on the same sample of effluent.

Seventeenth, Sec. 85. Twenty-Second, Sec. 47.

§12-506 TEST SCHEDULES

THIS SECTION INTENTIONALLY LEFT BLANK.

Seventeenth, Sec. 85. Twenty-Second, Sec. 48.

§12-507 MODIFIED TESTING REQUIREMENTS

The Board may modify the frequency and scope of toxicity testing. Any modification to the frequency and scope of toxicity testing shall be based on factors such as the relative risk of toxic contamination of receiving water, the characteristics of the wastewater and sludge, and the level or type of treatment and the nature of the receiving water. The Board may rely on state, federal and applicable parts of this Ordinance for guidance in making a determination under this section, including but limited to the following:

A. Established ambient water quality criteria intended to prevent the occurrence of toxic pollutants in toxic amounts as prohibited by both the US Clean Water Act and State law and protect aquatic life and human health;

B. Established aquatic life criteria intended to assure that toxic pollutants are not present in concentrations or amounts that would cause acute and or chronic adverse impacts on organisms in, on or using the surface waters;

C. Established human health criteria intended to assure that toxic pollutants are not present in concentrations or amounts that would cause adverse impact to persons who eat organisms or drink water taken from the surface waters; and/or

D. Established Priority Pollutant water quality criteria and Board established non-Priority Pollutant and/or chemical testing water quality criteria.

Seventeenth, Sec. 85. Twenty-Second, Sec. 49.

CHAPTER 13

AIR POLLUTION

Part

1. Short Title and Definitions
2. Prohibitions and Operations
3. Jay Air Emission Permit
4. Ambient Air Quality Standards
5. Emission Standards
6. Offset Requirements
7. Miscellaneous Air Pollution Control Requirements
8. Compliance Assurance
9. Hazardous Air Pollutants

Seventeenth, Sec. 86.

PART 1

SHORT TITLE AND DEFINITIONS

Section

§13-101 Short Title

§13-102 Definitions

§13-101 SHORT TITLE

This Chapter shall be known and may be cited as “**Jay Environmental Control and Improvement Ordinance-Air**”.

§13-102 DEFINITIONS

A. Specific Definitions. In this Chapter, unless context otherwise requires, the following words and phrases shall have the following meanings:

- 1. Actual emissions.** “Actual emissions” means the actual rate of emissions of a pollutant from an emissions unit. In general, actual emissions as of a particular date shall equal the average rate,

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in tons per year (tpy), at which the unit actually emitted the pollutant. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. The source specific allowable emissions for the unit are equivalent to the actual emissions of the unit. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

A. For the purposes of determining baseline emissions from a source, the calendar year 1977 is representative of normal operation, for SO₂ and particulate matter and calendar year 1987 is representative of normal operation for NO₂, except the Board may allow the use of a different time period upon a determination that it is more representative of normal operation.

B. For the purpose of determining whether a net emissions increase has occurred, the Board shall use the two (2) year period which precedes the application and which is representative of normal operation. The Board may allow the use of a different period upon a determination that it is more representative of normal operation.

2. Air contaminants. "Air contaminants" include, but are not limited to, dust, fumes, gas, mist, particulate matter, smoke, vapor or any combination thereof.

3. Air quality related values (AQRV). "Air quality related values" means all those values possessed by a Class I area except those that are not affected by changes in air quality and include all those assets of an area whose vitality, significance, or integrity is dependent in some way upon the environment.

4. Air pollution control apparatus or air pollution control system. "Air pollution control apparatus or air pollution control system" means and includes any appliance, equipment, or machinery which removes, controls, reduces, eliminates, disposes of or renders less noxious the emission of regulated pollutants or air contaminants into the ambient air.

5. Allowable emissions. "Allowable emissions" means the emission rate of an emissions unit or source calculated using the maximum rated capacity of the emissions unit or source, unless the emissions unit is subject to permit conditions which restrict the operating rate, or hours of operation, or both, and the most stringent emission rate applicable to the emissions unit as reflected in the emission permit (including those with a future compliance date) or applicable Town of Jay, state or federal standards, regulations or emission limitation. In no case shall allowable emissions exceed any requirements of 40 CFR Part 60, New Source Performance Standards (NSPS), 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS) or 40 CFR Part 63.

6. Ambient air. "Ambient air" means all air outside of buildings, stacks or exterior ducts.

7. Ambient increment. "Ambient increment" means, for new sources and modifications, the increase in ambient SO₂, PM₁₀, and NO₂ concentration of the future allowable emissions (the maximum emissions being modeled and permitted) over the baseline concentration of these ambient air pollutants. For existing sources, "ambient increment" means the increase in ambient SO₂, PM₁₀, and NO₂ concentration of the actual current emissions over the baseline concentration of these ambient air pollutants.

8. Applicable requirement. “Applicable requirement” means all of the following as they apply to emissions units including requirements that have future-effective compliance dates:

- A. Any standard or other requirement in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the CAA that implements the relevant requirements of the CAA, including any revisions to that plan;
- B. Any requirement enforceable by EPA and the citizens under the CAA that limits emissions for purposes of creating offset credits or for complying with or avoiding Applicable requirements;
- C. Any term or condition of a permit issued for the purpose of preconstruction permitting and requirements contained in regulations approved or promulgated through rulemaking under Title I, including parts C or D of the CAA;
- D. Any standard or other requirement under Section 111 of the CAA, including Section 111(d) (New Source Performance Standards);
- E. Any standard or other requirement under Section 112 of the CAA, including any requirement concerning accident prevention under Section 112(r)(7) of the CAA (National Emission Standards for Hazardous Air Pollutants);
- F. Any standard or other requirement of the acid rain program under Title IV of the CAA or the regulations promulgated thereunder;
- G. Any requirement established pursuant to Section 504(b) or Section 114(a)(3) of the CAA (Monitoring, Enhanced Monitoring and Compliance Certification);
- H. Any standard or other requirement governing solid waste incineration under Section 129 of the CAA;
- I. Any standard or other requirement for consumer and commercial products under Section 183(e) (Federal Ozone Measures) of the CAA;
- J. Any standard or other requirement for tank vessels under Section 183(f) of the CAA;
- K. Any standard or other requirement of the program to control air pollution from outer continental shelf sources under Section 328 of the CAA;
- L. Any standard or other requirement of the regulations promulgated to protect stratospheric zone under Sections 608 or 609 of Title VI of the CAA, and any other standard or other requirement under any other section(s) of Title VI of the CAA that EPA determines is applicable; and
- M. Any national ambient air quality standard or ambient increment, or visibility requirement under Part C of Title I of the CAA, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the CAA.

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9. Baseline concentration. “Baseline concentration” means the actual ambient air quality which existed in an area as of: August 7, 1977, for SO₂ and PM₁₀ and February 8, 1988, for nitrogen dioxide (NO₂).

For sulfur dioxide (SO₂) and PM₁₀, this term shall include the actual emissions representative of SO₂ and PM₁₀ sources in existence on August 7, 1977, and the allowable emissions of sources which commenced construction before January 6, 1975, but were not in operation by August 7, 1977.

The following SO₂ and PM₁₀ emissions shall not be included in the baseline concentration but shall be included in the determination of the applicable maximum allowable increases:

- A. Actual emissions from any source on which construction commenced between January 6, 1975 and August 7, 1977; and
- B. Actual emission increases and decreases at any source occurring after August 7, 1977.

For nitrogen oxides (NO_x) (measured as NO₂), this term shall include the actual emissions representative of sources in existence on February 8, 1988. For sources starting operation after February 8, 1985, but prior to February 8, 1988, representative emissions shall be determined after three years of operation and be based on two years of actual emissions more representative of normal operation. NO_x sources commencing construction by February 8, 1988, but not in operation by that date shall use allowable emissions for baseline concentration until three years after start of operations at which time actual emissions more representative of normal operation for that source shall be determined and used for baseline concentration.

The actual NO_x (measured as NO₂) emissions increases or decreases at any source occurring after February 8, 1988, shall not be included in the baseline concentration but shall be included in the determination of the maximum allowable increases, except as specified in the previous paragraph.

10. Begin actual construction. “Begin actual construction” means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and the construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

11. Best Available Control Technology (BACT). “Best Available Control Technology” means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant emitted from or which results from the new or modified emissions unit which the Board on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such emissions unit through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of each pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and 61 or any applicable emission standard established by the Board. If the Board determines that technological or

economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

12. Best Available Retrofit Technology (BART). “Best Available Retrofit Technology” means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each regulated pollutant which is emitted by an existing facility which emits or has the potential to emit any regulated pollutant at a rate equal to or greater than the emission rates for significant emissions as defined in this Part and which causes visibility impairment. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. If the Board determines that technological or economic limitations on the applicability of measurement methodology to a particular existing facility would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or other operational standard, or combination thereof, to require the application of BART. Such standard, to the degree possible, is to set forth the emission reduction to be achieved by implementation of such design, equipment, work practice or operation, and must provide for compliance by means which achieve equivalent results.

13. Best Practical Treatment (BPT). “Best Practical Treatment” means that method which controls or reduces emissions of regulated pollutants to the lowest possible level considering:

- A. The then existing state of technology,
- B. The effectiveness of available alternatives for reducing emissions from the source being considered, and
- C. The economic feasibility for the type of establishment involved.

14. Brown stock washer system. “Brown stock washer system” means brown stock washers and filtrate tanks used to wash the pulp following the digestion system. Diffusion washer systems and washer systems that do not use liquor filtrate for shower water are excluded from this definition.

15. CAA. “CAA” means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

16. Class I significant impact area. This section intentionally omitted.

17. Commence. “Commence”, as applied to the construction of a source or modification, means that the owner or operator has all necessary preconstruction approvals or permits required by local, state or federal air quality control laws and regulations and has either:

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A. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

B. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

18. Construction. “Construction” means any physical change or change in the method of operation including fabrication, erection, installation, demolition or modification of an emissions unit.

19. Continuous emission monitor. “Continuous emission monitor” means the total equipment required for the determination of a gas concentration, pollutant emission rate or opacity reading and the associated data recording equipment (e.g., strip chart, computer dish, magnetic tape, etc.).

20. Control system. “Control system” means a combination of one or more capture system(s) and control device(s) working in concert to reduce discharges of pollutants to the ambient air.

21. Curtailment. “Curtailment” means the partial or temporary removal of equipment or partial or temporary cessation of use of a particular piece of equipment resulting in a partial reduction of emissions.

22. Digester system. “Digester system” means each continuous digester or each batch digester used for the cooking of wood in white liquor, and associated flash tank(s), blow tank(s), chip steaming vessel(s).

23. Emission. “Emission” means the release of regulated pollutants into the ambient air, or the regulated pollutants so released.

24. Emission limitation or emission standard. The terms, “emission limitation” and “emission standard”, mean a requirement which limits the quantity, rate, or concentration of emissions of regulated pollutants on a continuous basis, including the use of specific technology or fuels with specified pollution characteristics or any requirement relating to the operation or maintenance of a source or emissions unit to assure continuous emission reduction.

25. Emissions unit. “Emissions unit” means any equipment or pollutant-emitting activity of a source which emits or has the potential to emit a regulated pollutant.

26. Exempt VOC compounds. “Exempt VOC compounds” means those compounds which are excluded from the definition of VOC due to their negligible photochemical reactivity.

27. Facility, building, structure, or installation. “Facility, building, structure, or installation” means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). See also the definition for “source”.

28. Fuel-burning equipment. “Fuel-burning equipment” means any furnace, boiler, apparatus, and all appurtenances thereto used in the process of burning fuel, for the primary purpose of producing heat and power, including stationary internal combustion engines.

29. Fugitive emissions. “Fugitive emissions” means the release of pollutants to the air which could not reasonably be made to pass through stacks, vents, ducts, pipes, or any other confined air stream. Fugitive emissions include, but are not limited to, fugitive equipment leaks, evaporative losses from surface impoundments, and releases from building ventilation systems.

30. Gaseous excess emissions. “Gaseous excess emissions” means any period which the average gaseous emissions, as measured by the continuous emissions monitor, exceeds the applicable emission standard.

31. General process source or general process equipment. “General process source” or “general process equipment” means any emission unit, except fuel-burning equipment, incinerators, and mobile sources.

32. Generally Available Control Technology (GACT) emission limitation. “Generally Available Control Technology (GACT) emission limitation” means a HAP emission limitation for a source category of HAP area sources that EPA promulgates pursuant to Section 112 of the CAA.

33. HAP or Hazardous air pollutant. “HAP or Hazardous air pollutant” means an air pollutant to which no ambient air standard is applicable and which in the judgment of the Board the State of Maine or EPA causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in serious irreversible, or incapacitating reversible, illness or an increase in mortality. This term shall include, but is not limited to, those pollutants for which EPA, the State of Maine or the Town of Jay has established standards, limitations or guidelines.

34. HAP area source. “HAP area source” means any stationary source of HAP that is not a HAP major source.

35. HAP emission limitation. “HAP emission limitation” is a requirement for a MACT or GACT emission limitation under Section 112(d) of the CAA, a work practice standard under Section 112(h) of the CAA, a case-by-case MACT under Section 112(g) or 112(j) of the CAA, a residual risk standard under Section 112(f) of the CAA, or any other such requirement for HAP control required by EPA, the State of Maine or the Town of Jay.

36. HAP emission unit. “HAP emission unit” means any building, structure, or installation that emits HAPs greater than that defined as an insignificant activity unless the HAP emission unit is otherwise subject to an applicable requirement. A HAP emission unit can include a single emission point or collection of points.

37. HAP major source. “HAP major source” means any source who emits HAPs in quantities that can be defined as a major source.

38. Incinerator. “Incinerator” means any device, apparatus or equipment used for destroying, reducing or salvaging by fire or heat any material or substance,

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- A. Class IA - Direct fed incinerators with a burning rate of up to 75 pounds per hour of type 1, 2 or 3 waste, or any combination of the three waste types;
- B. Class IB - Direct fed incinerators with a burning rate of 75 pounds per hour or over, suitable for type 1, 2 or 3 waste, or any combination of the three waste types;
- C. Class IIA - Flue-fed, single chamber incinerators with more than two (2) square feet burning area, for type 1 or 2 waste, or a combination of the two waste types. This type of incinerator is served by one vertical flue functioning both as a chute for charging waste and to carry the products of combustion to the atmosphere. This type of incinerator has been installed in apartment houses or multiple dwellings;
- D. Class IIB - Chute-fed multiple chamber incinerators, for apartment buildings with more than two (2) square feet burning area, suitable for type 1 or 2 waste, or a combination of the two waste types. (Not recommended for industrial installation). This type of incinerator is served by a vertical chute for charging wastes and has a separate flue for carrying the products of combustion to the atmosphere;
- E. Class III - Municipal incinerators suitable for type 0, type 1, type 2 or type 3 wastes, or any combination of the four wastes, and are rates in tons per 24-hours;
- F. 1. Class IVA - Crematory and pathological incinerators, suitable for type 4 waste, and
2. Class IVB - Pathological - infections waste incinerators, suitable for type 7 waste; and
- G. Class V - Incinerators designed for specific by-products wastes, type 5 or type 6, or a combination of the two waste types.

Incinerators include smelters, bake-off ovens and other similar units, but do not include boilers or stationary internal combustion units.

39. Innovative control technology. “Innovative control technology” means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

40. Insignificant Activities. “Insignificant Activities” means activities at a facility that the Board determines to be trivial for permitting purposes utilizing state and federal guidance. A source must include emissions from insignificant activities in determining if the source is a Major Source or Major Modification.

41. Intermittent Control System (ICS). “Intermittent Control System” means a dispersion technique which varies the rate at which pollutants are emitted into the atmosphere according to meteorological conditions and/or ambient concentrations of the pollutant, in order to prevent ground-level concentrations in excess of applicable ambient air quality standards. Such a dispersion technique is an ICS whether used alone, used with other dispersion techniques, or used as a supplement to continuous emission control (i.e., used as a supplemental control system).

42. Intrafacility Emission trading. “Intrafacility Emission trading” means the transfer of regulated pollutant emissions within a facility that are provided for in the permit and do not require a permit revision.

43. Leak. “Leak” means any discharge of liquid or solid, or emission of regulated pollutants, from any confining structure including, but not limited to, stacks, pipes, vents, or ducts, except where allowable emissions pass through the intended outlet for the emissions.

44. Lowest Achievable Emission Rate (LAER). “Lowest Achievable Emission Rate” means the more stringent rate of emissions based on the following:

A. The most stringent emission limitation which is contained in the implementation plan of any State for that class or category of source, unless the owner or operator of the proposed source demonstrates that those limitations are not achievable; or

B. The most stringent emission limitation which is achieved in practice by that class or category of source, whichever is more stringent. In no event may LAER result in emission of any pollutant in excess of those standards and limitations promulgated pursuant to the Clean Air Act as amended, or any emission standard established by the State of Maine or Town of Jay.

45. MACT (Maximum Achievable Control Technology) emission limitation for existing HAP sources. “MACT emission limitation for existing HAP sources” means the emission limitation pursuant to Section 112 of the CAA reflecting the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the EPA, the State of Maine or the Town of Jay, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable by HAP sources in the category or subcategory or subcategory to which the standard applies. This limitation shall not be less stringent than the MACT floor.

46. MACT emission limitation for new HAP sources. “MACT emission limitation for new HAP sources” means the emissions limitation pursuant to Section 112 of the CAA which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions of hazardous air pollutants (including a prohibition on such emissions, where achievable) that the EPA, the State of Maine, or the Town of Jay taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable by sources in the category or subcategory to which the standard applies.

47. MACT floor. “MACT floor” means the same as that defined in 40 CFR Part 63.

48. Major modification. “Major modification” means:

A. Any modification that would result in a “significant emissions increase” of any regulated pollutant at an existing stationary source that is a major source prior to the modification; or

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B. Any modification at an existing stationary source that is a minor source prior to the modification:

1. which would result in an increase in the source's potential to emit "significant emissions" of any regulated pollutant; or
2. which, by itself, would result in an increase in actual emissions by "significant emissions" of any regulated pollutant.

49. Major source. "Major source" means any source which emits or has the potential to emit any regulated pollutant at a rate equal to or greater than the emission rates for significant emissions or is a stationary source or group of stationary sources as described in paragraphs (A), (B) or (C) of this definition. For purposes of paragraphs (B) and (C), major stationary source includes any group of stationary sources belonging to a single major industrial grouping that is located on one or more contiguous or adjacent properties, and that are under common control of the same person (or persons under common control). For the purposes of defining "major source" in paragraphs (B) or (C) of this definition, a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the air pollutant-emitting activities at such source or group of sources on contiguous or adjacent properties are under common control and belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. In addition, for purposes of paragraphs (B) and (C) of this definition, any stationary source (or group of stationary sources) that supports another source, where both are under common control of the same person (or persons under common control) and on contiguous or adjacent properties, shall be considered a support facility and part of the same source regardless of the 2-digit SIC code for the support facility. A stationary source (or group of stationary sources) is considered a support facility to a source if at least fifty percent (50%) of the output of the support facility is dedicated to the source.

A. Any major source under Section 112 of the CAA (relating to hazardous air pollutants), which is defined as follows:

1. For air pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls in the aggregate, ten (10) tons per year (tpy) or more of any single hazardous air pollutant (HAP) (including any fugitive emissions of such pollutant) which was listed pursuant to Section 112(b) of the CAA, 25 tpy or more of any combination of such HAP (including any fugitive emissions of such pollutants), or such lesser quantity as the EPA may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such emissions units or sources are major sources; or
2. For radionuclides, major source shall have the meaning specified in rules promulgated by the EPA.

B. Any major stationary source of air pollutants or any group of stationary sources as defined in Section 302 of the CAA that directly emits or has the potential to emit 100 tpy or more of any single regulated pollutant (including any fugitive emissions of any such air pollutant, as determined by rule by the EPA). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the CAA or for the purposes of paragraph (C) of this definition, unless the stationary source belongs to one of the following categories of stationary sources:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 50 tons of refuse/day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or combinations thereof) totaling more than 50 million British thermal units per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
27. Any other stationary source categories regulated under Section 111 or 112 of the CAA and for which the EPA has made an affirmative determination under section 302(j) of the CAA, but only with respect to those air pollutants that were regulated for that category.

C. Any major stationary source as defined in Part D of Title I of the CAA, including, but not limited to:

1. For federal ozone nonattainment areas, except sources for which the EPA has made a finding under Section 182(f)(1) or (2) of the CAA that requirements under Section 182(f) of the CAA do not apply, the following sources with the potential to emit:

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- a. one hundred (100) tpy or more of nitrogen oxides (NO_x) in areas classified as “marginal” or “moderate” or in the ozone transport regions.
 - b. fifty (50) tpy or more of NO_x in areas classified as “serious,”
 - c. twenty five (25) tpy or more of NO_x in areas classified as “severe,” and
 - d. ten (10) tpy or more of NO_x in areas classified as “extreme”;
2. For federal ozone nonattainment areas, the following sources with the potential to emit:
 - a. one hundred (100) tpy or more of volatile organic compounds (VOC) in areas classified as “marginal” or “moderate,”
 - b. fifty (50) tpy or more of VOC in areas classified as “serious” or in the ozone transport region,
 - c. twenty five (25) tpy or more of VOC in areas classified as “severe,” and
 - d. ten (10) tpy or more of VOC in areas classified as “extreme”;
 3. For particulate matter of less than ten (10) microns (PM₁₀) nonattainment areas, sources with the potential to emit seventy (70) tpy or more of PM₁₀ in areas that are classified as “serious”.

50. Marginal ozone nonattainment area. “Marginal ozone nonattainment area” means the area so classified by the EPA, as not meeting or exceeding the National Ambient Air Quality Standard for ozone published at 40 CFR Part 81.

51. Maximum Achievable Control Technology (MACT) emission limitation. “Maximum Achievable Control Technology (MACT) emission limitation” means the MACT emission limitation required for new and existing HAP major sources. This emission limitation is either promulgated by EPA pursuant to Section 112 of the CAA, or is determined by the Department of Environmental Protection on a case-by-case basis pursuant to Section 112(g) or (j) of the CAA.

52. Minor Modification. “Minor Modification” means any modification that:

- A. would result in less than a significant emissions increase of all regulated pollutants at an existing source that emits or has the potential to emit significant emissions prior to the modification;
- B. would increase the source’s potential to emit by less than significant emissions of all regulated pollutants at an existing stationary source that emits or has the potential to emit less than significant emissions prior to the modification; or
- C. is determined not to be a Minor Change or Major Modification and is subject to permitting as defined in this Chapter.

53. Minor Change. “Minor Change” means a permit revision for:

- A. the correction of typographical errors;
- B. the identification of an administrative change;
- C. a change to more frequent monitoring, reporting record keeping or testing requirements;

- D. a modification that results in an emissions increase under four (4) tpy for any one regulated pollutant and under eight (8) tpy of total regulated pollutants, and is determined not to be a Major or Minor Modification and is subject to permitting as defined in this Chapter; or
- E. any other changes determined by the Board to be a Minor Change.

54. Minor Source. “Minor source” means any source which emits or has the potential to emit regulated pollutants at rates less than significant emissions and is not otherwise a Major Source.

55. Moderate ozone nonattainment area. “Moderate ozone nonattainment area” means the area so classified by the EPA as not meeting or exceeding the National Ambient Air Quality Standard for ozone.

56. Modification or modified source. “Modification or modified source” means any physical change in, or change in the method of operation of a source, that would result in the emission of any regulated pollutant not previously emitted, except that:

- A. Routine maintenance, repair, and replacement shall not be considered a physical change;
- B. The following shall not be considered a change in the method of operation:
 - 1. An increase in the production rate at an existing source, unless such change is prohibited under any federally enforceable permit condition which was established after January 6, 1975, and if such increase does not exceed the operating design capacity of the source;
 - 2. An increase in the hours of operation, unless such change is prohibited under any federally enforceable permit condition which was established after January 6, 1975; or
 - 3. Use of an alternative fuel or raw material if prior to January 6, 1975, the source is designed to accommodate and is permitted to use such alternative fuel; and
- C. Replacement of pollution control apparatus shall not be considered a physical change or change in the method of operation for the purposes of this definition, but shall be governed by the requirements found in this Chapter and shall be treated consistent with the CAA and federal regulations.

57. Net emissions increase.

- A. “Net emissions increase” means the amount by which the sum of the following exceeds zero:
 - 1. Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source;
 - 2. Any other increase and decrease in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable;

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B. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

1. The date five (5) years before construction on the particular change commences; and
2. The date that the increase from the particular change occurs.

C. Any increases or decreases in actual emissions is creditable only:

1. If the EPA has not relied on the increase or decrease in issuing a license for the source under this section and the license of the source which was increased or decreased is not in effect when the increase in actual emissions from the particular change occurs; and
2. To the extent that the new level of actual emissions exceeds the old level;

D. An increase or decrease in actual emissions of nitrogen oxides which occurs before February 8, 1988, is creditable only if it is required to be considered in calculating the maximum allowable increases remaining available; and

E. A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual or allowable emission, whichever is greater;
2. It is enforceable by both the Department and the Administrator of the EPA at and after the time that actual construction on the change begins;
3. It has not been relied upon in issuing any license under regulations approved pursuant to 40 CFR 51 Subpart I, or it has not been relied upon in demonstrating attainment or reasonable further progress; and
4. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

F. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

58. Nitrogen oxide (NO_x). “NO_x” means all oxides of nitrogen, measured as NO₂ on a molar basis.

59. Nonattainment area. “Nonattainment area” means an area designated by the Department of Environmental Protection pursuant to Chapter 114 of the Department’s regulations (relating to classification of air quality control regions), or those areas designated by the EPA pursuant to Section 107 of the CAA, in which one or more ambient air quality standards are not being met.

60. Nonattainment pollutant. “Nonattainment pollutant” means a regulated pollutant which is the basis for designation of a nonattainment area. For ozone nonattainment areas and the Ozone Transport Region, emissions of VOC and NO_x shall be considered to be the nonattainment pollutant except where those areas have received a waiver from EPA under Section 185(f) of the CAA.

61. Nonclassified ozone nonattainment area. “Nonclassified ozone nonattainment area” means the area so classified by the EPA that has incomplete or no data published at 40 CFR Part 81.

62. Normal operation. “Normal operation” means the level of operation that actually occurred or can be reasonably anticipated to occur in meeting the source’s needs or demand over a reasonable period of time. Emissions units that are under construction or are going through initial start up procedures (refractory curing, tube boilout, etc.) have not begun normal operations.

63. Opacity. “Opacity” means the degree of light obscuring capability of emissions of visible air contaminants expressed as a percentage. For example, complete obscuration shall be expressed as 100% opacity.

64. Open burning. “Open burning” means the burning of any type of combustible material in the open ambient air without being completely enclosed and where the products of combustion are emitted directly into the ambient air without passing through a stack, chimney or duct or other device or structure.

65. Owner or Operator. “Owner or Operator” means any person who owns, leases, operates, controls or supervises a regulated pollutant source.

66. Ozone Transport Region. “Ozone Transport Region” (OTR) means that part of the State of Maine included in a region of states comprised of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia, established by Section 184 of the CAA for the control of interstate ozone air pollution. For the State of Maine, the Ozone Transport Region includes all of the counties in the State.

67. Part 70. “Part 70” means CAA, Title V operating permit program regulations codified at 40 CFR Part 70.

68. Particulate matter. This section intentionally omitted.

69. Particulate matter. “Particulate matter” means all finely divided solid or liquid material, other than uncombined water, as measured by applicable reference methods, including but not limited to methods or an equivalent or alternative method.

70. Petroleum liquids. “Petroleum liquids” means crude oil, condensate, and any finished or intermediate products manufactured or extracted in a petroleum refinery.

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71. PM_{2.5}. “PM_{2.5}” means particulate matter with an aerodynamic diameter less than or equal to a nominal two point five (2.5) micrometers as measured by applicable reference methods, or an equivalent or alternative method.

72. PM₁₀. “PM₁₀” means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by applicable reference methods, or an equivalent or alternative method.

73. Pollutant or air pollutant. “Pollutant or air pollutant” means the same as “air contaminant or regulated pollutant.”

74. Potential to emit. “Potential to emit” means the maximum capacity of a stationary source to emit any regulated pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a regulated pollutant, including air pollution control equipment, and restrictions on the hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in the determining the potential to emit of a source.

75. Process weight rate. “Process weight rate” means the average total weight of all materials, not including any gaseous, liquid or solid fuels, moisture or combustion air, introduced into any manufacturing, industrial or combustion process that may result in the emission of any regulated pollutant to the ambient air, computed on an hourly basis, and shall be expressed in terms of weight per unit of time.

76. Production area. “Production area” means a contiguous land area: (1) on which a source is located; (2) where the source regularly conducts activities necessary to the production of goods or services; (3) which is of a size no larger than reasonably necessary to conduct such activities; and (4) from which the general public is excluded by fence or other physical barrier. The term includes but is not limited to: materials handling and storage areas; parking areas; waste water treatment facilities; solid waste disposal areas; and on site buildings and structures.

77. Reasonable further progress. “Reasonable further progress” means such annual incremental reductions in emissions of the relevant regulated pollutant as are required by Part D of the CAA or may reasonably be required by the EPA for the purpose of ensuring attainment of the relevant national ambient air quality standards in the area by the relevant statutory deadlines.

78. Reasonably Available Control Technology (RACT). “Reasonably Available Control Technology” means that method of treatment that is reasonably available as a retrofit to existing processes or equipment involved and shall be determined by the Board utilizing state and federal guidance for the class or category of such source considering the existing state of technology, current federal guidelines for determining the degree of emission reduction achievable and the type and unique character of affected sources.

79. Regulated pollutant. “Regulated pollutant” means the following:

- A. Nitrogen oxides or any volatile organic compounds;
- B. Any pollutant for which a national or Maine or Town of Jay ambient air quality standard has been promulgated;

- C. Any pollutant that is subject to any standard promulgated under Section 111 of the CAA;
- D. Any Class I or II substance subject to a standard promulgated under or established by title VI of the CAA;
- E. Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the CAA, including sections 112(g), (j), and (r) of the CAA, including the following:

1. Any pollutant subject to requirements under section 112(j) of the CAA. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the CAA, any pollutant for which a subject source would be a major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the CAA; and

2. Any pollutant for which the requirements of section 112(g)(2) of the CAA have been met, but only with respect to the individual source subject to section 112(g)(2) requirements.

- F. Any pollutant, including hazardous air pollutant, for which a regulation or standard has been adopted by the Maine Board of Environmental Protection or Town of Jay.

80. Resource Recovery Facility. “Resource Recovery Facility” means any building, structure or installation where municipal wastes are incinerated to produce useable energy.

81. Secondary emissions. “Secondary emissions” means emissions which occur as a result of the construction or operation of a source or modification, but do not come from the source or modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the source or modification which causes the secondary emissions. Secondary emissions include, but are not limited to: (1) emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the source or modification; (2) emissions from ships, trains, trucks or other mobile sources associated with the new source or modification.

82. Significant emissions. “Significant emissions” means any rate of emissions that would equal or exceed one hundred (100) tons per year of any regulated pollutant or fifty (50) tons per year of VOC in the OTR.

83. Significant emissions increase. “Significant emissions increase” means a major modification which results in:

- A. Any net emissions increase of a regulated pollutant that would equal or exceed any of the rates listed:

Regulated Pollutant	Rates (TPY)
Particulate matter	25
PM ₁₀	15
Sulfur dioxide	40
Nitrogen oxides	40
Nitrogen oxides (as precursor to ozone)	40
Carbon monoxide	100

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Ozone (measured as VOC)	40
Ozone (measured as VOC) in the OTR	40
Lead	0.6
Asbestos	0.007
Beryllium	0.0004
Mercury	0.1
Vinyl chloride	1
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide (H ₂ S)	10
Total reduced sulfur (including H ₂ S)	10
Reduced sulfur compounds (including H ₂ S)	10
Chromium	0.2
MWC organics (Municipal Waste Combuster measured as total tetra-through octachlorinated dibenzo-p- dioxins and dibenzofurans)	3.5 x 10 ⁻⁶
MWC metals (measured as particulate matter)	15
MWC acid gases (measured as SO ₂ and HCl)	40

B. Any emission rate of a new source which would construct within ten (10) kilometers of a Class I area and have an impact on such area equal to or greater than one (1) microgram per cubic meter (ug/m^3) (24-hour average) of PM₁₀, SO₂, or NO_x.

C. Any emission rate of a modification that is equal to the difference of the current and future licensed potential to emit rates which is located within ten (10) kilometers of a Class I area and would have an impact on such area equal to or greater than one (1) microgram per cubic meter (ug/m^3) (24-hour average) of PM₁₀ or SO₂, or NO_x.

84. Significant impact. “Significant impact” means the contribution for all regulated pollutants which is equal to or greater than, or may reasonably be expected to be equal to or greater than, the levels shown below for respective averaging times:

Pollutant	Averaging Time				
	Annual	24-Hr	8-Hr	3-Hr	1-Hr
SO ₂	1.0 ug/m^3	5 ug/m^3		25 ug/m^3	
PM ₁₀	1.0 ug/m^3	5 ug/m^3			
NO ₂	1.0 ug/m^3				
CO			500 ug/m^3		2000 ug/m^3

These significant impact levels are only applicable to Class II areas. The Board may require modeling of impacts in Class I areas beyond the significant impact area.

85. Significant impact area. “Significant impact area” is a circular area with a radius extending from the source to the most distant point where approved dispersion modeling predicts a significant impact will occur, or a modeling receptor distance of fifty (50) kilometers (km), whichever is less. The significant impact area used for the air quality analysis of a particular regulated pollutant is the largest area of all averaging periods modeled as determined for that regulated pollutant.

86. Solid waste fuel. “Solid waste fuel” when burned as fuel in solid waste fuel-burning equipment, means any material, other than primary fossil fuel, including without limitation, garbage, refuse, sludge from a waste treatment plant or air pollution control facility, sawdust, shavings, chips, bark, slabs or inert fill material.

87. Solid waste fuel-burning equipment. “Solid waste fuel-burning equipment” means any furnace, boiler, or apparatus and all appurtenances thereto, capable of burning solid waste fuel for the primary purpose of producing thermal energy.

88. Source. “Source” means any building, structure, facility, or installation which emits or may emit any regulated pollutant.

89. Stack. “Stack” means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct, but not including flares.

90. Temporary source. “Temporary source” means a source which changes location to another site at least once during any five (5) year license period.

91. Total reduced sulfur (TRS). “Total reduced sulfur (TRS)” means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, that are released during the Kraft pulping operation.

92. Total Suspended Particulate (TSP). This section intentionally omitted.

93. Venting of TRS. “Venting of TRS” means the direct release of gases which contain TRS to the atmosphere in excess of five (5) parts per million (ppm) by volume dry basis from any digester system, multiple-effect evaporator system, condensate stripper system, or from any brown stock washer system and which are not combusted in a lime kiln, recovery furnace, incinerator or other combustion device, or are not controlled by a means other than combustion, as specified by this chapter.

94. Volatile Organic Compounds (VOC). “Volatile Organic Compounds” means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This definition excludes the following organic compounds which have been determined to have negligible photochemical reactivity:

- methane;
- ethane;
- acetone;
- parachlorobenzotrifluoride;
- cyclic, branched, or linear completely methylated siloxanes;

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methylene chloride (dichloromethane);
1,1,1-trichloroethane (methyl chloroform);
1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113);
trichlorofluoromethane (CFC-11);
dichlorodifluoromethane (CFC-12);
chlorodifluoromethane (CFC-22);
trifluoromethane (CFC-23);
1,1-difluoro-1-chloro-2,2-difluoro-2-chloroethane (CFC-114);
chloropentafluoroethane (CFC-115);
1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
1,1,1,2-tetrafluoroethane (HFC-134a);
1,1-dichloro-1-fluoroethane (HCFC-141b);
1-chloro-1,1-difluoroethane (HCFC-142b);
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
pentafluoroethane (HFC-125);
1,1,2,2-tetrafluoroethane (HFC-134);
1,1,1-trifluoroethane (HFC-143a);
1,1-difluoroethane (HFC-152a);
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
difluoromethane (HFC-32);
ethylfluoride (HFC-161);
1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
1,1,2,2,3-pentafluoropropane (HFC-245ca);
1,1,2,3,3-pentafluoropropane (HFC-245ea);
1,1,1,2,3-pentafluoropropane (HFC-245eb);
1,1,1,3,3-pentafluoropropane (HFC-245fa);
1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
1,1,1,3,3-pentafluorobutane (HFC-365mfc);
chlorofluoromethane (HCFC-31);
1-chloro-1-fluoroethane (HCFC-151a);
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃);
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane
(CF₃)₂CF₂OCH₃);
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅);
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane
(CF₃)₂CF₂OC₂H₅);
methyl acetate; and
perfluorocarbon compounds which fall into these classes:
cyclic, branched, or linear, completely fluorinated alkanes;
cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
cyclic, branched, or linear, completely fluorinated tertiary amines with no
unsaturations; and
sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds
only to carbon and fluorine.

VOC may be measured by applicable test methods including but not limited to methods identified under 40 CFR Part 60. Where such a method also measures compounds with

negligible photochemical reactivity, these negligibly-reactive compounds shall not be considered VOC if the amount of such compounds can be and is accurately quantified.

95. Waste. “Waste” means refuse, garbage, rubbish, trash or unwanted or discarded materials of any kind and source which shall be classified as follows:

A. Type 0 - Trash, a mixture of highly combustible waste such as paper, cardboard, cartons, wood boxes and combustible floor sweepings, from commercial and industrial activities. The mixtures contain up to ten (10)% by weight of plastic bags, coated paper, laminated paper, treated corrugated cardboard, oily rags and plastic or rubber scraps. This type of waste contains about ten (10)% moisture and five (5)% incombustible solids and has a heating value of approximately 8500 British thermal units (BTU) per pound as fired;

B. Type 1 - Rubbish, mixture of combustible waste such as paper, cardboard cartons, wood scrap, foliage and combustible floor sweepings, from domestic, commercial and industrial activities. The mixture contains up to twenty (20)% by weight of restaurant or cafeteria waste, but contains little or no treated papers, plastic or rubber wastes. This type of waste contains about 25% moisture and 10% incombustible solids and has a heating value of approximately 6500 BTU per pound as fired;

C. Type 2 - Refuse, consisting of an approximately even mixture of rubbish and garbage by weight. This type of waste is common to apartment and residential occupancy, consisting of up to fifty (50)% moisture, seven (7)% incombustible solids, and a heating value of approximately 4300 BTU per pound as fired;

D. Type 3 - Garbage, consisting of animal and vegetable wastes from restaurants, cafeterias, hotels, hospitals, markets and like installations. This type of waste contains up to seventy (70)% moisture, and up to five (5)% incombustible solids and has a heating value of approximately 2500 BTU per pound as fired;

E. Type 4 - Human and animal remains, consisting of carcasses, organs and solid organic wastes from hospitals, laboratories, abattoirs, animal pounds, and similar sources, consisting of up to 85% moisture, five (5)% incombustible solids and having a heating value of approximately 1000 BUT per pound as fired;

F. Type 5 - By-product waste, gaseous, liquid or semi-liquid such as tar, paints, solvents, sludge, fumes, etc. BUT values must be determined by the individual materials to be destroyed;

G. Type 6 - Solid by-product waste, such as rubber, plastics, contaminated wood waste, etc. BTU values must be determined by the individual materials to be destroyed; and

H. Type 7 - Infectious Waste - Commonly referred to as red bag waste, this includes surgical, obstetrical, biological, isolation, blood and blood product, renal dialysis, serums and vaccines, laboratory, and “sharps” (potentially infectious articles that may cause punctures or cuts, including intravenous tubes with needles attached) waste. Also included are animal carcasses and body parts, bedding and other wastes from animals re-exposed to pathogens and human tissues and anatomical parts which emanate from surgery, surgical

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procedures, autopsy, and laboratory. This term shall not include radiologically contaminated materials.

B. General Definitions. In addition, Chapter 1 contains general definitions applicable throughout this Ordinance.

First, Sec. 83, 84, 85, 86, 87, 88, 89, 90 and 91. Fifth, Sec. 28, 29, 30 and 31. Sixth, Sec. 62 and 63. Eighth, Sec. 25. Eleventh, Sec. 17 and 18. Thirteenth, Sec. 57. Fifteenth, Sec. 4. Seventeenth, Sec. 87. Eighteenth, Sec. 22 and 23. Twentieth, Sec. 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28.

PART 2

PROHIBITIONS AND OPERATIONS

Section

- §13-201 Prohibitions
- §13-202 Exemptions
- §13-203 Open Burning
- §13-204 Ambient Air Monitoring
- §13-205 Short-Term Noncompliance Reporting
- §13-206 Reporting

Seventeenth, Sec. 88. Eighteenth, Sec. 24.

§13-201 PROHIBITIONS

A. No person shall emit or cause to be emitted regulated pollutants or air contaminants from any source into the ambient air of the Town of Jay without a Jay air emission permit from the Board unless the source is exempt.

B. No person shall commence construction of any source or modify an existing source without a permit unless the source is exempt.

C. Sulfur content of fuel

1. No person may use any liquid fossil fuel with a sulfur content greater than 2.0% by weight.
2. No person may use any solid fossil fuel with a sulfur content greater than 0.96 pounds sulfur per million British Thermal Units.
3. Flue gas desulfurization. Any source that installs any approved flue gas desulfurization system or other prescribed sulfur removal device shall be permitted to use fuel with a sulfur

content in excess of the limitations of subsections 1 and 2 such that, after control, total sulfur dioxide emission do not exceed 1.92 pounds of sulfur dioxide per million British Thermal Units in any 24-hour period.

4. Electrical generating facilities. Any electrical generating facility owned or operated by a regulated electric utility may use liquid fossil fuel with a sulfur content of up to 2.5% by weight provided that the facility has operated at an average of not more than 20% of its capacity factor over the most recent 4-year period. This exemption is not applicable to the ambient air quality provisions of this chapter.

D. No person may discharge air contaminants to the ambient air in an amount or concentration that soils or damages property or has an adverse effect on the public health, safety or welfare.

Sixth, Sec. 64. Eleventh, Sec. 19. Thirteenth, Sec. 58. Seventeenth, Sec. 89., Twentieth, Sec. 29.

§13-202 EXEMPTIONS

A. Exemptions.

An air emission permit is not required for the following sources, except that once a source requires a Jay air emission permit, all emissions at the source must be included. In no case shall these exemptions apply when determining whether a source is a Major Source or Major Modification.

- a. Fuel-burning equipment (or combinations thereof), whose total maximum design heat input is less than 10.0 million British Thermal Units per hour. Fuel-burning equipment, excluding stationary internal combustion engines, less than 1.0 MMBtu/hr shall not be included in this threshold assessment and stationary internal combustion engines less than 0.5 MMBtu/hr shall not be included in its threshold assessment;
- b. Stationary internal combustion engine (or combinations thereof) whose total maximum design heat input is less than 5.0 million British Thermal Units per hour, or a gas/propane fired stationary internal combustion engine (or combinations thereof) with a total maximum design heat input of less than 10.0 million British Thermal Units per hour which demonstrates that the maximum design capacity is physically limited to generate 25 tons/year or less. Units less than 0.5 MMBtu/hr shall not be included in this threshold assessment;
- c. Incinerators which are classified as Class IA;
- d. Incinerators which have a total combined burner maximum design heat input less than 1.0 MMBtu/hr for the auxiliary fuel, not to include incinerators which are classified as Class IVA and Class IVB;
- e. Total facility general process sources whose emissions without consideration of air pollution control apparatus and under normal operation are less than 100 lb/day or 10 lb/hr of any regulated pollutant except that these numerical limitations may not apply to a source which is subject to regulation for the control of hazardous air pollutants under federal, state or Town of Jay standards, limitations or requirements;

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- f. Units whose emissions are generated from the sole function of providing power for propulsion of mobile sources, including vessels;
- g. Bulk gasoline terminals and gasoline service stations with a maximum design daily throughput of less than 20,000 gallons;
- h. Bulk petroleum storage facilities with petroleum products stored in tanks with a maximum design capacity of less than 39,000 gallons;
- i. Sources whose potential to emit without consideration of air pollution control apparatus is less than 0.6 ton of lead per year;
- j. Any change to a source presently exempt from permitting unless that change increases the total capacity of the source to greater than the exemptions provided for in this section;
- k. Dry cleaner system that engages in the cleaning of fabric by means of one or more washes in perchloroethylene, extraction of the solvent by spinning, and drying by tumbling in an air stream; and
- l. Sawing of wood and supporting wood handling systems.

B. Optional.

Any source listed in this subsection that is exempted from the requirements to obtain an air emission permit may opt to apply for a permit under this Chapter.

C. Insignificant Activities.

A source not otherwise exempt may petition the Board for a determination that an emission is an insignificant activity and is therefore exempt from obtaining an air emission permit.

First, Sec. 92. Seventeenth, Sec. 90. Eighteenth, Sec. 25.

§13-203 OPEN BURNING

A. The following open-burning activities and materials shall be prohibited.

- 1. Open burning of tires, rubber products, asphalt shingles, industrial leather scraps, and wire insulation.
- 2. Open burning of solid waste materials, other than brush and demolition debris, at the Jay solid waste disposal site.
- 3. Residential open burning of highly combustible household trash, rubbish, refuse, garbage, human and animal remains and by-product waste such as tar, paints, solvents, and sludge.
- 4. No person may engage in any open burning except in conformity with subsections B and C.

B. Permissible open burning with permit.

The following types of burning are permissible if a permit has been obtained from the fire warden, forest ranger or Jay Fire Department, so long as the burning is conducted according to the terms and conditions of the permit and provided that no nuisance is created:

1. Recreational campfires kindled when the ground is not covered by snow;
2. Fires in conjunction with holiday and festive celebrations;
3. Burning of solid or liquid fuels and structures for the purpose of research or bona fide instruction and training of municipal, volunteer, and industrial fire fighters in methods of fighting fires when conducted under the direct control and supervision of qualified instructors and with a written objective for the training. For purposes of this section, "qualified instructor" means the fire chief or designee or a fire-fighting instructor. Structures burned for instructional purposes must be first emptied of waste materials that are not part of the training objective;
4. Burning for agricultural purposes which include, but are not limited to, open burning of blueberry fields, potato tops, hayfields and prescribed burning for timberland management;
5. Residential open burning of leaves, brush, deadwood, and tree cuttings accrued from normal property maintenance by the individual land or homeowner or lessees thereof;
6. Burning on site for the disposal of wood wastes and lead-free painted and unpainted wood from construction and demolition debris generated from the clearing of any land or erection, modification, maintenance, demolition or construction of any highway, railroad, power line, communication line, pipeline, building, or development, either on site, or at the Jay solid waste disposal facility where open burning of that material is not expressly prohibited;
7. Burning of vegetative growth for hazard abatement purposes such as, but not limited to, the burning of grass fields;
8. Burning for the containment or control of spills of gasoline, kerosene heating oil, or similar petroleum product;
9. The burning of brush and demolition debris at Jay's solid waste disposal facility if permitted by the facility's permit;
10. The burning of empty containers, including fireboard boxes and paper bags, previously containing explosives and being disposed of in accordance with 25 M.R.S.A. § 2472; and
11. Explosives being disposed of under the direct supervision and control of the State Fire Marshal.

C. Permissible open burning without permit.

The following types of burning are permissible without permit so long as no nuisance is created:

1. Recreational campfires kindled when the ground is covered by snow or on frozen bodies of water;

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2. Residential use of outdoor grills and fireplaces for recreational purposes such as preparing food; and
3. Use of outdoor grills and fireplaces for recreational purposes such as preparing food at commercial campgrounds as long as commercial campgrounds are licensed by the health engineering division of the Department of Human Services.

First, Sec. 93, 94 and 95. Tenth, Sec. 35 and 36. Eleventh, Sec. 20 and 21. Seventeenth, Sec. 91 and 92. Twenty-Second, Sec. 50.

§13-204 AMBIENT AIR MONITORING

Monitoring done by the permit holder, if requested by the Board pursuant to Section 3-112, subsection F of this Ordinance, shall conform to test procedures specified in the permit and in the absence of such procedures, with the requirements of 40 CFR Part 58, Appendix B, as amended, and Chapter 3 of this Ordinance. Modifications to these procedures are permitted only after receiving written approval from the Board.

First Sec. 96. Thirteenth, Sec. 59. Seventeenth, Sec. 93.

§13-205 SHORT-TERM NONCOMPLIANCE REPORTING

In addition to reporting requirements set forth in Chapter 3, any person owning or operating any source discharging air contaminants to the air of the State in the Town, shall notify the Board, the Code Enforcement Officer or Jay Police Dispatcher by telephone or in person within four (4) hours, and in writing within 48 hours, unless specified otherwise in a Jay air emission permit, in the event there is noncompliance with any applicable emission limit. If the noncompliance relates to exceedences of opacity limits only, the permit holder shall report such noncompliance in writing within 48 hours and need not comply with 4 hour notification. The written communication shall include:

- a. A description and quantification of the noncompliance and its cause;
- b. Period of noncompliance, including exact date and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance.

First, Sec. 97. Tenth, Sec. 37. Eighteenth, Sec. 26.

§13-206 REPORTING

Reporting shall be done by the permit holder in accordance with Chapter 3, this Chapter and the requirements of any permit.

Seventeenth, Sec. 95.

PART 3

JAY AIR EMISSION PERMIT

Section

- §13-301 Jay Air Emission Permit Application
- §13-302 Permit Renewal
- §13-303 Major Modifications and New Major Sources
- §13-304 Minor Modifications and New Minor Sources
- §13-305 Minor Change
- §13-306 Permit Transfer
- §13-307 Ambient Air Quality Analysis

Seventeenth, Sec. 96. Eighteenth, Sec. 27.

§13-301 JAY AIR EMISSION PERMIT

A. Projects requiring multiple application submittals under this Chapter

If a source is applying simultaneously for the renewal of a permit and/or amendments under more than one section of this Chapter, the source may submit one application covering all required information for all relevant sections.

B. Required application form and additional information

The application shall include an application form prescribed by the Board and additional information required by the Board, unless otherwise specified by this Chapter. Prior to or during application preparation and submittal, an applicant may request in writing that the Board determine if certain air emitting activities or groups of activities are insignificant activities according to 13-102(A)(40). The application may not omit information needed to determine the applicability of, or to impose, any requirement. An application for a Minor Modification, Major Modification or Minor Change need supply only that information related to the proposed amendment. The application form and the additional required information shall include, but is not limited to, the following elements:

1. Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, responsible official's name, and telephone number and names of plant site manager/contact;
2. Identification of the source's processes and products;

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3. Any insignificant activities that must be listed in the application as specified under Town of Jay, State of Maine or federal law or regulation;
4. The following emissions related information for units and activities that are not insignificant activities (the Board may waive the requirement to submit any or all of items (a)-(h) if the information required is deemed not pertinent to the application):
 - a. All emissions of regulated pollutants including fugitive emissions;
 - b. Any additional emissions-related information necessary to verify which requirements are applicable to the source;
 - c. Identification and description of all points of emissions described in (a) and (b) above in sufficient detail to establish the source's applicability to any requirements;
 - d. Emission rates in tons per year (tpy) and in such terms as are necessary to establish compliance consistent with the applicable reference test methods and compliance consistent with the applicable emission limit;
 - e. The following information to the extent it is needed to determine or regulate emissions: fuel types, fuel use, raw materials, production rates, and operating schedules;
 - f. Identification and description of air pollution control equipment and compliance monitoring devices or activities and, if requested by the Board, operating and maintenance records for air pollution control apparatus and monitoring equipment;
 - g. Limitations on source operation affecting emissions, or any work practice standards, where applicable, for all regulated pollutants; and
 - h. Calculations used as the basis for emissions-related information.
5. The following air pollution control requirements:
 - a. Citation and description of all Applicable requirements and State of Maine requirements;
 - b. Citation and description of all Town of Jay requirements; and
 - c. Description of or reference to any applicable test method relating to each Applicable requirement, State of Maine and Town of Jay requirements;
6. Other specific information that may be necessary to implement and enforce other Applicable requirements of the CAA, Town of Jay requirements and State of Maine requirements or to determine the applicability of such requirements.
7. An explanation of any proposed exemptions from otherwise Applicable requirements, State of Maine requirements and Town of Jay requirements;
8. Additional information as determined to be necessary by the Board to define alternative operating scenarios identified by the applicant or to define terms and conditions allowing intrafacility emissions trading;

9. A description of the source category or categories which are applicable to the source, HAP emissions unit(s) requiring HAP emission limitations, and whether the HAP emission unit(s) require a MACT emission limitation for an existing or new HAP source;
10. An Assured Compliance Plan in accordance with Part 8;
11. A compliance certification in accordance with Part 8;
12. Such other facts or information that the Board may require to determine the compliance status of the source;
13. Any other information that may be necessary to implement and enforce any Town of Jay, state or federal requirements applicable to the source;
14. If required by the Board, proposed monitoring, modeling, testing, record keeping and reporting protocols, the results of previously performed instack monitoring, and results of previously performed stack testing;
15. Results of meteorology or air quality monitoring if required by the Board, including an analysis of meteorological and topographical data necessary to evaluate air quality impacts;
16. If any regulated pollutant from an existing source has or will have a significant impact, a description of the factors used in the ambient air quality impact analysis; and
17. Emission statements submitted to the MDEP within the previous 5 years.

In lieu of a Town of Jay form, an applicant may use a Part 70 application form for a Part 70 License as administered by the Maine Department of Environmental Protection, provided all necessary information required by this Chapter is included.

C. Term of a permit

Each Jay air permit issued by the Board shall have a term of no longer than five (5) years after the date of issuance.

D. Expiration of a permit

If an acceptable renewal application as determined by the Board, is submitted and according to Chapter 1, then all terms and conditions of the permit shall remain in effect until the Board takes final action on the application for renewal of the permit. The provisions of this subsection do not bar enforcement action pursuant to Chapter 4A or 4B of the Ordinance.

Failure to submit a timely and acceptable application prior to expiration of the permit renders the permit expired and the owner or operator is considered to be operating and maintaining an air contamination source without a permit from the Board, in violation of this Chapter.

E. Source obligation

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Approval to construct a new source or modification, or an exemption under this Chapter shall not relieve any owner or operator of a source from the responsibility to comply fully with any Town of Jay, state or federal requirements applicable to the source.

F. Inspections to verify information

Employees and authorized representatives of the Board shall be allowed safe access to the permit holder's premises during business hours, or at any time during which any emissions units are in operation, and at such other times as the Board deems necessary for the purpose of performing tests, collecting samples, conducting inspections, or examining and copying records relating to emissions.

G. Replacement of Air Pollution Control Systems

If a permit holder is proposing to replace an existing air pollution control system, including the replacement of oil burner guns, the applicant must demonstrate to the Board that the new air pollution control system will achieve BPT. The replacement may be proposed within the renewal application or as a Minor Change.

H. HAP emissions

In accordance with this Chapter, the Board may control HAP by adopting emission limits, design equipment, work practices or operational standards for activities emitting hazardous air pollutants.

I. Other Provisions

Applicants for permit renewals, for new Major Sources, for Major Modifications for New Minor Sources, for Minor Modifications, for Minor Changes, and for permit transfers shall also comply with other relevant sections of Chapter 13.

First Sec. 98, 99, 100, 101, 102, 103, 104, 105, 106, 107 and 127. Sixth, Sec. 13. Eighth, Sec. 26. Eleventh, Sec. 22. Thirteenth, Sec. 60. Fourteenth, Sec. 16. Seventeenth, Sec. 97. Eighteenth, Sec. 28, 29, 30 and 31. Twenty-Second, Sec. 51.

§13-302 PERMIT RENEWAL

A. Applicability

The following procedures shall be used for existing sources applying for the renewal of a permit.

B. Schedule

If the applicant is applying for a renewal of a permit, a complete application must be submitted prior to the expiration date of the existing permit in accordance with this Chapter and Chapter 1 of the Ordinance.

C. Required Application Information

For a renewal of a permit, the applicant shall submit to the Board the information listed below:

1. The application form and information as specified in Section 13-301 of this Chapter, containing all required information;
2. The last complete application and support documents with all new information indicated and any proposed alternative operating scenarios. New material appended to the application may be limited to any changes that may have occurred since the time of previous permit issuance.
3. A Best Practical Treatment (BPT) analysis as described below:

BPT

Emissions from existing sources undergoing renewal of a permit shall be deemed to be receiving best practical treatment if those emissions are being controlled by pollution control apparatus that has been approved by the Board and which has been installed less than 15 years prior to the date of permit application approval, or if those emissions are being controlled in a manner consistent with emission controls commonly used in sources of similar age and design in similar industries. BPT may require the use of additional instrumentation, operating practices, best management practices, fuel content requirements, good combustion techniques, automated process controls, upgrading of component parts, emissions testing, requirements for continuous emission monitors, maintenance programs for air pollution control equipment, or recordkeeping to demonstrate performance of air pollution control systems or other mitigating measures.

For emissions from existing sources for which BPT was determined less than 15 years prior to the date of permit application approval, the applicant shall submit a summary of the pollution control apparatus for those emission sources.

BPT was determined 15 years or more prior to the date of permit application approval, the applicant must demonstrate that each emissions units is receiving BPT and such demonstration shall consider the emission limit for which the air pollution control system was designed, the emission limitations adopted by the Board and in effect at the time of submission of an application for renewal, as well as the reliability, age, and life expectancy of the air pollution control system.

BPT shall not require the use of a lower sulfur content unless a lower sulfur fuel is required to comply with the applicable emissions standards or applicable ambient air quality standards.

BPT shall not force replacement of existing air pollution control equipment on the basis that more efficient or reliable air pollution control equipment is available at the time of renewal. However, BPT may require replacement with more efficient or reliable air pollution control equipment under the following conditions:

- i. The applicant is proposing replacement of the existing air pollution control equipment;
- ii. Any emissions unit violates an applicable emission limitation;
- iii. Additional reductions are necessary to achieve or maintain ambient air quality standards;
- iv. The Board determines that previously uncontrolled emissions should be controlled in order to prevent an unreasonable risk to the environment or public health;

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- v. The Board determines that previously controlled emission should be controlled to a greater efficiency considering the toxicity of regulated pollutants; or
- vi. Additional reductions are necessary to restore ambient increment even if that ambient increment was previously authorized to the owner or operator of an existing source.

4. Reasonably Available Control Technology (RACT).

The applicant for an existing source located in, or whose emissions of a federal nonattainment pollutant result in a significant impact to any federal nonattainment area, shall include a summary of the conditions the source complies with to meet RACT requirements.

5. Best Available Retrofit Technology (BART).

An existing source with emissions that the Board or Maine Department of Environmental Protection has determined to cause adverse impact on visibility in any Class I area in the Town of Jay or of any integral vista for that Class I area, shall demonstrate that each emission unit contributing to the adverse impact on visibility will receive BART as expeditiously as practicable, but no later than five (5) years after the Board identifies BART.

6. Hazardous Air Pollutants (HAPs).

If a source is subject to a newly applicable HAP emission limitation, the application shall contain any required information regarding the limitation.

7. Ambient Air Quality Impact Analysis.

If required by the Board, the applicant shall submit the results of any ambient air quality impact analyses, including an analysis of the impacts to Air Quality Related Values and impact on visibility if the Board determines that the source may affect ambient increments or Air Quality Related Values in any Class I area in the Town of Jay or integral vista to that Class I area.

8. The certification of the responsible official required pursuant to Chapter 3, Section 3-112(I) of this Ordinance.

D. Permit Content

The Board may impose any appropriate and reasonable permit conditions to ensure or maintain compliance with any requirement, emission limitation, ambient air quality standard, or regulation.

The following elements shall be included in the permit:

1. Equipment Description and Emission Limitations.

The permit shall contain terms and conditions with respect to emissions that the Board determines are sufficient to assure compliance with any requirement and shall include the following:

- a. A list of all emission units that are subject to this Chapter;

- b. Emission limitations, including those operational requirements and limitations that assure compliance with any requirement at the time of issuance of the permit; and
 - c. A brief technical evaluation of the controls accepted as BPT.
2. The permit shall specify and reference the origin of and authority for each term or condition pertaining to all Town of Jay requirements, and identify any difference in form as compared to the requirements upon which the term or condition is based.
3. Terms and conditions for reasonably anticipated operating scenarios identified by the applicant in its application:
- i. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating; and
 - ii. Must ensure that the terms and conditions of each such alternative scenario meet all Applicable requirements, State of Maine requirements or Town of Jay requirements.
4. Terms and conditions, if the application requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:
- i. Shall include all terms required to determine compliance; and
 - ii. Must meet all Applicable requirements, State of Maine requirements, and Town of Jay requirements.
5. Compliance Assurance Requirements in accordance with Part 8 of this Chapter, including but not limited to:
- a. Compliance Assurance Plan implementation;
 - b. Monitoring Requirements;
 - c. Recordkeeping Requirements;

The permit shall incorporate record keeping requirements and, require where applicable, the following records of required monitoring information:

- i. The date, place and time of sampling or measurements;
- ii. The date(s) analyses were performed;
- iii. The company or entity that performed the analyses;
- iv. The analytical techniques or methods used;
- v. The results of such analyses; and

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- vi. The operating conditions as existing at the time of sampling or measurement;
- d. Reporting Requirements

The permit shall incorporate reporting requirements as set forth in Chapter 3 and this Chapter.

- e. Other Compliance Requirements

- i. Compliance certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a permit shall contain a certification by a responsible official.

- ii. A schedule of compliance consistent with this Chapter;

- iii. Progress reports consistent with an applicable schedule of compliance and this Chapter to be submitted at least every six (6) months, or at a more frequent period if specified in the Applicable requirement or by the Board. Such progress reports shall contain the following:

- (a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

- (b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

- iv. Requirements for compliance certification with terms and conditions contained in the permit, including emissions limitations, standards, or work practices and such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the CAA.

6. Temporary Sources.

Permits for temporary sources shall include conditions that will assure compliance with all requirements applicable to the source at all authorized locations and the requirements of this Chapter, including requirements that the owner or operator notify the Board at least ten (10) days in advance of each change in location, unless the Board allows for a shorter notice.

7. HAPs.

If an existing source is subject to a HAP emission limitation or requirement, the permit shall contain the requirements of the HAP emission limitation.

8. Ambient Air Quality Impact Analysis.

The permit shall include a section summarizing any required ambient air quality impact analysis.

9. Standard Conditions.

The Board may impose any appropriate and reasonable conditions to insure compliance with emission and ambient air quality standards and this Ordinance. However, every Jay Air Emission Permit automatically shall be subject to the following standard conditions and the conditions of Chapter 3:

- a. Employees and authorized representatives of the Town shall be allowed access to the permit holder's premises during business hours, or any time during which any emissions units are in operation, and at such other times as the Board deems necessary for the purpose of performing tests, collecting samples, conducting inspections, or examining and copying records relating to emissions;
- b. The permit holder shall acquire a new or amended air emission permit prior to commencing construction of a modification, unless otherwise provided for in this Chapter;
- c. Approval to construct shall become invalid if the source has not commenced construction within eighteen (18) months after receipt of such approval or if construction is discontinued for a period of eighteen (18) months or more. The Board may extend this time period upon a satisfactory showing that an extension is justified, but may condition such extension upon a review of either the control technology analysis or the ambient air quality standards analysis, or both;
- d. The permit holder shall establish and maintain a continuing program of best management practices for suppression of fugitive emissions during any period of construction, reconstruction, or operation which may result in fugitive emissions, and shall submit a description of the program to the Board upon request;
- e. The permit does not convey any property rights of any sort, or any exclusive privilege;
- f. The permit holder shall maintain and operate all emission units, air pollution control, and monitoring systems required by the air emission permit in a manner consistent with good air pollution control practice for minimizing emissions;
- g. The permit holder shall retain records of all required monitoring data and support information for a period of at least six (6) years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.
- h. The permit holder shall maintain records of all deviations from permit requirements. Such deviations shall include, but are not limited to malfunctions, failures, downtime, and any other similar change in operation of air pollution control systems or the emissions unit itself that is not consistent with the terms and conditions of the air emission permit. The permit holder shall notify the Board in accordance with Chapter 3 of such occasions and shall report the probable cause, corrective action, and any excess emissions in the units of the applicable emission limitation;
- i. Upon the written order of the Board, the permit holder shall establish and maintain such record, make such reports, install, use, and maintain such monitoring equipment, sample such

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emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Board shall prescribe), and provide other information as the Board may reasonably require to determine the permit holder's compliance status.

j. The permit holder shall submit quarterly reports of any required monitoring. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official.

k. The permit holder shall submit Compliance Certification to the Board that complies with the requirements of Part 8.

l. The permit holder shall comply with all terms and conditions of the air emission permit, applicable ambient air quality standards, emission standards, State laws and regulations, Federal laws and regulations and this Ordinance. The filing of an appeal by the permit holder, the submission of petition to modify or reopen a permit, the notification of planned changes or anticipated noncompliance by the permit holder or the filing of a permit or amendment application shall not stay any condition of the permit.

m. It is not a defense to an enforcement action that the disruption, cessation, or reduction of permitted operations would have been necessary in order to maintain compliance with the conditions of the air emission permit;

n. In accordance with air emission compliance test protocols or other methods approved or required by the Board, including but not limited to 40 CFR Part 60, the permit holder shall:

i. perform stack testing under operating conditions approved by the Board:

(a) within sixty (60) calendar days of receipt of a notification to test from the Board, if visible emissions, equipment operating parameters, staff inspection, air monitoring or other cause indicate to the Board that equipment may be operating out of compliance with emission standards or permit conditions;

(b) to demonstrate compliance with the applicable emission standards; or

(c) pursuant to any other requirement of this permit to perform stack testing.

ii. install or make provisions to install test ports, test platforms, if necessary, and other accommodations necessary to allow emission testing; and

iii. submit a written report to the Board within thirty (30) days from the date of test completion.

o. If the results of a stack test performed under operating conditions approved by the Board indicate emissions in excess of the applicable standards, then:

i. within thirty (30) days following receipt of such test results, the permit holder shall re-test the non-complying emission source under the same operating conditions approved by the Board at the time of the initial test or under operating conditions approved by the Board and in accordance with air emission compliance test protocols or other methods approved or required by the Board, including but not limited to 40 CFR Part 60; and

ii. the days of violation shall be presumed to include the date of stack test and each and every day of operation thereafter until compliance is demonstrated under operating conditions approved by the Board, except to the extent that the facility can prove to the satisfaction of the Board that there were intervening days during which no violation occurred or that the violation was not continuing in nature; and

iii. the permit holder may, upon the approval of the Board following the successful demonstration of compliance at alternative or reduced load conditions, operate under such alternative or reduced load conditions on an interim basis prior to a demonstration of compliance under normal and representative process and operating conditions.

p. Notwithstanding any other provision in the Ordinance or in state or federal law or rules, the existence or duration of a violation may be established by any credible evidence including but not limited to observations, operating parameters, reporting information, records, correlations, operating data, environmental indices, health indices, compliance assurance data, test results, opinion evidence or other evidence.

E. Criteria for permit approval

The Board shall grant the permit, if the following criteria are met:

1. The Board has received a complete application for a permit pursuant to this Chapter;
2. The emissions will receive best practical treatment (BPT), including, but not limited to, the requirements specified in this Chapter;
3. The emissions will not violate Town of Jay, State of Maine or federal hazardous air pollutant standards, requirements or limitations or can be controlled so as not to violate the same;
4. The emissions either alone or in conjunction with existing emissions will not violate or can be controlled so as not to violate ambient air quality standards including, but not limited to, ambient increments as adopted by the Department of Environmental Protection pursuant to Title 38 MRSA §584 or this Chapter, or for those sources located within or significantly impacting a federal nonattainment area, the impact to ambient air quality standards is consistent with any plan demonstrating Reasonable Further Progress as defined in Section 171 of the CAA;
5. If the Board determines that the emissions from an existing source are reasonably attributable to the adverse impact on visibility in any Class I area in the Town of Jay, BART will apply to the emissions;
6. The conditions of the permit provide for compliance with all Town of Jay, State of Maine and Applicable requirements;
7. All control technology requirements, including, but not limited to, BPT, BACT, RACT, LAER, and other operating limitations for any emissions unit will be complied with;
8. If the applicant proposes to change the emission limit upon which an air quality impact analysis was based, the applicant may be required to provide a new air quality impact analysis for the new emission limit; and

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F. Joint Processing.

A renewal permit may incorporate a minor modification, minor revision or license transfer when being processed. However, the source must meet the processing requirements for each, as applicable.

First, Sec. 108, 109 and I 10. Fifth, Sec. 32. Sixth, Sec. 66. Ninth, Sec. 8 and 9. Tenth, Sec. 38. Seventeenth, Sec. 98. Eighteenth, Sec. 32, 33, 34, 35 and 36. Twenty-Second, Sec. 52, 53 and 54.

§13-303 MAJOR MODIFICATION AND NEW MAJOR SOURCES

1. Applicability

The following procedures shall be used for new Major Sources and Major Modifications.

If the applicant is applying for a Major Modification or a new Major Source permit, the permit must be issued by the Board prior to the start of construction of the modification or the new source.

2. Schedule

An applicant who intends to construct a phased construction project in which the construction phases exceed 18 months or the period of the permit, whichever is less, shall submit an application for a Major Modification for each future phase including a new Best Available Control Technology (BACT) determination as described below.

3. Required Application Information

The applicant shall submit to the Board the information listed below:

- a. The application form as specified in Section 13-301 of this Chapter that contains the required information.
- b. A description of the nature, location (identified on an original U.S. Geological Survey Topographical map), plot plan, building dimensions, and any other information required by the Board;
- c. A schedule for construction of the major modification or the new major source;
- d. Best Available Control Technology (BACT).

The applicant must demonstrate that each emissions unit to be constructed, reconstructed or modified will receive BACT. BACT shall be applied to all regulated pollutants from such emission units, fugitive as well as stack emissions. In selecting one of the alternatives in technology, the applicant should consider application of flue gas treatment, fuel treatment and processes, and techniques which are inherently low polluting and are economically feasible. In cases where technological or economic limitations on the application of measurement techniques would make the imposition of an emission limitation infeasible, a

design, operating, equipment, or work practice standard may be provided by the source. BACT shall include the following:

- i. A description of all alternative systems considered that could achieve a higher degree of emissions control, including all technologically and economically feasible alternatives which have greater control capabilities than the proposed BACT system, and which were used for the same or similar applications. If no better control alternative is technologically and economically feasible for an emissions unit, a statement documenting why a better control alternative is not available, such as a statement pertaining to unique processing equipment or procedures;
- ii. A top down analysis that includes, if applicable, an explanation of why the more stringent level of control is inappropriate for BACT in terms of energy, economic and environmental impacts. The rationale should be presented in an analysis using descending order of control effectiveness with the impacts of each rejected alternative relative to the proposed BACT system.

e. Lowest Achievable Emission Rate (LAER).

The applicant with a significant emissions increase or a new major source with significant emissions of a federal nonattainment pollutant located in the geographical boundaries of a nonattainment area or the Ozone Transport Region, or whose emissions will significantly impact a nonattainment area, must demonstrate that LAER is being met for the federal nonattainment pollutant.

f. Innovative control technology waiver.

- i. Conditions for approval. If the facility is located in an attainment area, the applicant may request the Board to grant a waiver from any or all of the requirements for control technology and to approve a system of innovative control technology. The Board may grant a waiver for the implementation of innovative control technology under the following conditions:

- (a) The proposed system of innovative control technology will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

- (b) The applicant agrees to achieve, by a date approved by the Board, a continuous emissions reduction rate greater than or equivalent to the rate that would have been required by BACT. The date of achievement shall be no later than four (4) years from the time of startup or seven (7) years from the issuance of the permit. The date of achievement for HAP sources shall be no later than four (4) years after issuance of a permit.

- (c) The modification or new source will meet the control technology and Ambient Air Quality Analysis requirements of this Chapter based on the emissions rate that the applicant would be required to meet on the date specified by the Board;

- (d) The modification or new source will not, prior to the date specified by the Board in subparagraph b, above;

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- (i) Cause or contribute to any violation of any applicable ambient air quality standard;
- (ii) Impact any area where an applicable ambient increment is known to be violated;
- (iii) Cause a significant impact in any PM₁₀, SO₂, or NO₂ nonattainment area; or
- (iv) Cause or contribute to an adverse Air Quality Related Values impact in any Class I area in the Town of Jay; and

(e) The applicant will meet all of the relevant requirements of this Chapter.

ii. Conditions for withdrawal. The Board shall withdraw any approval to employ a system of innovative control technology under the following conditions:

(a) The proposed system of innovative control technology fails to achieve the continuous emissions reduction rate by the specified date;

(b) The proposed system of innovative control technology fails before the specified date, so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(c) The Board decides at any time that the proposed system of innovative control technology is unlikely to achieve the continuous emissions reduction rate by the specified date, or will cause or contribute to an unreasonable risk to public health, welfare or safety.

iii. Extension of compliance deadline. If the applicant fails to meet the continuous emissions reduction rate by the specified date, or if the Board's approval is withdrawn in accordance with this section the Board may allow the applicant an additional period, not to exceed three (3) years, to meet the requirement for the application of BACT through use of a demonstrated system of control. No extension will be allowed for regulated HAP sources.

g. Compliance Assurance Plan.

Information required under Part 8 of this Chapter; and

h. Growth Analysis.

The air quality impacts and the nature and extent of emissions from all general, commercial, residential, industrial, and other growth in the area affected by the major modification or the new major source permit, including associated mobile home sources, which has occurred since August 7, 1977 for sulfur dioxide (SO₂) and PM₁₀, and since February 8, 1988 for NO_x, pursuant to Section 7 of this Chapter. The growth analysis shall be performed only for those pollutants (SO₂, PM₁₀, and NO_x) by which the modification or new source was determined as major.

i. Title, Right or Interest.

Prior to acceptance of an application for processing for a new source permit, the applicant shall demonstrate to the Board's satisfaction sufficient title, right or interest in all of the property which is proposed for development or use in accordance with Chapter 3 of the Ordinance.

j. HAPs.

The application shall contain HAP information if a source is subject to any Town of Jay, state or federal HAP standard, requirement or limitation.

k. Ambient Air Quality Impact Analysis.

If required by the Board pursuant to this Chapter, the results of any ambient air quality impact analyses, including an analysis of the impacts to Air Quality Related Values and impact on visibility if the Board determines that the source may affect ambient increments or Air Quality Related Values in any Class I area in the Town of Jay or integral vistas to that Class I area.

4. Permit Content

The permit shall meet all of the relevant criteria as specified in Section 13-302 of this Chapter for renewal of an air emission permit.

5. Criteria for permit approval

The Board shall grant the permit, if the following criteria are met:

- a. The Board has received an acceptable application;
- b. The emissions will receive BACT and/or LAER;
- c. The emissions will not violate Town of Jay, State of Maine or federal hazardous air pollutant standards, requirements or limitations;
- d. The emissions either alone or in conjunction with existing emissions will not violate or can be controlled so as not to violate ambient air quality standards including, but not limited to, ambient increments as adopted by the Maine Department of Environmental Protection pursuant to Title 38 MRSA §584 or this Chapter; or for those sources locating within or significantly impacting a federal nonattainment area, the impact to ambient air quality standards is consistent with any plan demonstrating Reasonable Further Progress as defined in Section 171 of the CAA;
- e. The conditions of the permit provide for compliance with all Town of Jay, State of Maine and Applicable requirements;
- f. The emissions will not have an adverse impact on Air Quality Related Values of any Class I area in the Town of Jay, including any integral vistas for that Class I area;

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g. With respect to any Major Modification or any new Major source, which will emit significant emissions of a nonattainment pollutant, which seeks to relocate in the geographical boundaries of a federal nonattainment area or the Ozone Transport Region, or which will have a significant impact on a federal nonattainment area, the following conditions will be met:

- i. All sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control with such person) in this State are in compliance, or on an enforceable schedule for compliance, with all applicable emission limitations under the CAA including, but not limited to, the terms and conditions of any permit, the applicable emission limitations and the ambient air quality standards; and
- ii. The owner or operator has complied with the applicable provisions of this Chapter relating to growth offset regulation;
- iii. The owner or operator has conducted an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

Seventeenth, Sec. 99. Eighteenth, Sec. 37, 38, 39 and 40.

§13-304 MINOR MODIFICATIONS AND NEW MINOR SOURCES

1. Applicability

The following procedures shall be used for new Minor Sources and Minor Modifications.

2. Schedule

An applicant who intends to construct a phased construction project in which the construction phases exceed 18 months or the period of the permit, whichever is less, shall submit an application for a minor modification for each future phase, including a new Best Available Control Technology (BACT) determination.

3. Required Application Information

The applicant shall submit to the Board the information listed below:

- a. The application form as specified in Section 13-301 of this Chapter that contains the required information;
- b. A description of the nature, location (identified on an original U.S. Geological Survey Topographical map), plot plan, building dimensions, and any other information required by the Board;
- c. A schedule for construction of the Minor Modification or new Minor Source;

d. Best Available Control Technology (BACT) as described above in Subsection 13-303(3)(d);

e. If relevant, the innovative control technology waiver as specified above in Subsection 13-303(3)(f);

f. All process control and compliance monitoring devices or activities, and any other emission reduction system planned by the owner or operator for a Minor Modification or new Minor Source and such other information required to accurately establish emission estimates, and to document future compliance;

g. Title, Right or Interest demonstration for new sources in accordance with Chapter 3;

h. Ambient Air Quality Impact Analysis;

The results of any ambient air quality impact analyses if required by the Board pursuant to this Chapter; and

i. The certification of the responsible official.

4. Permit Content

The permit content shall meet all of the relevant criteria as specified in Section 13-302 (Renewal) of this Chapter for renewal of an air emission permit.

5. Criteria for permit approval

The Board shall grant the permit, if the following criteria are met:

a. The Board has received an acceptable application for a permit pursuant to this Chapter;

b. The emissions will receive BACT;

c. The emissions will not violate Town of Jay, state or federal hazardous air pollutant standards, requirements or limitations or can be controlled so as not to violate the same;

d. The emissions either alone or in conjunction with existing emissions will not violate or can be controlled so as not to violate ambient air quality standards including, but not limited to, ambient increments as adopted by the Maine Department of Environmental Protection pursuant to Title 38 MRSA §584 or this Chapter; or for those sources locating within or significantly impacting a federal nonattainment area, the impact to ambient air quality standards is consistent with any plan demonstrating Reasonable Further Progress as defined in Section 171 of the CAA;

e. The conditions of the permit provide for compliance with all Town of Jay, State of Maine and Applicable requirements;

Seventeenth, Sec. 100. Eighteenth, Sec. 41, 42 and 43.

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§13-305 MINOR CHANGE

A. Applicability

Minor Change procedures may be used for:

1. the correction of typographical errors;
2. the identification of an administrative change;
3. a change to more frequent monitoring, reporting, record keeping or testing requirements;
4. a modification at a facility with a permitted emissions increase under four (4) tpy for any one regulated pollutant and under eight (8) tpy of total regulated pollutants, and is determined not to be a Major or Minor Modification and is subject to permitting as defined in this Chapter; or
5. any other changes determined by the Board to be a Minor Change.

B. Schedule

The applicant may request a Minor Change at any time during the term of a permit.

C. Required Application Information

For a Minor Change, the application submission shall consist of a letter requesting the Minor Change with the reason for the request, and any relevant information including, but not limited to, a description of the revision and any emission calculations. The signatory sheet signed by a responsible official shall be included in the submittal.

D. Permit Content

A Minor Change shall contain the following:

1. A description of the change and the basis for the request, and
2. Terms and conditions that will assure compliance with any requirements applicable to the change.

E. Criteria for permit approval

The Minor Change shall be granted if the Board determines that the change meets the applicability criteria specified above in subsection A and will not violate any requirements applicable to the source. Any permit amendment approved by the Board shall be appended to or incorporated in the original permit.

Seventeenth, Sec. 100.

§13-306 PERMIT TRANSFER

The following outlines the procedures for issuing a Permit Transfer:

A. Applicability

The transferee shall abide by all of the conditions of the permit and is jointly or severally liable with the original permit holder for any violation of the terms and conditions thereof pending determination on the application for approval of a transfer.

B. Schedule

An application for a Permit Transfer shall be submitted to the Board no later than two weeks after any transfer of property subject to a permit.

C. Required Application Information

1. Identifying new information, including company name and address (or plant name and address if different from the company name), owner's name, agent and telephone number, responsible official's name and address, telephone number and names of plant site manager or designated contact person;
2. A letter including the following information:
 - a. The full name and address of the new owner;
 - b. The date of the official sale;
 - c. A copy of the purchase agreement or deed showing transfer of ownership, or demonstration of title, right, or interest;
 - d. A statement that there will be no increase in air emissions beyond that provided for in the existing permit, either in quantity or type, without prior written permission from the Board; and
 - e. A demonstration of technical and financial capacity of the new owner and intent to:
 - i. Comply with all conditions of the permit, and
 - ii. to satisfy all regulatory criteria and to comply with the Ordinance.
3. The signatory sheet from a responsible official.

D. Permit Content

The Permit Transfer shall contain the following:

1. Full name and address of new owner and the date of transfer of ownership;
2. A statement that there will be no increase in air emissions beyond that provided for in the existing permit, either in quantity or type, without prior written permission from the Board; and

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3. A statement describing the technical and financial capacity of the new owner.

E. Criteria for permit approval

Approval for a Permit Transfer shall be based on the acceptability of the information required in the application submittal.

Seventeenth, Sec. 100.

§13-307 AMBIENT AIR QUALITY ANALYSIS

A. General

It shall be the burden of any applicant to provide an affirmative demonstration that its emissions, in conjunction with all other sources, will not violate state or Town of Jay ambient air quality standards, except that sources in nonattainment areas or which significantly impact a nonattainment area shall be required to demonstrate that the source's emissions are consistent with Reasonable Further Progress provisions of the State Implementation Plan. An applicant may use ambient air monitoring, modeling, or other assessment techniques as approved by the Board. The analyses shall include relevant emissions units at the source, meteorological and topographical data necessary to estimate such impacts, and shall consider the impact of fugitive emissions, to the extent quantifiable, secondary emissions, and emissions from other existing sources including increases in mobile and area source emissions impacting the same area.

The level of analysis shall depend upon the size of the source, the regulated air pollutants emitted, existing air quality, proximity to Class I or nonattainment areas, or areas where increment has been substantially consumed. The air quality impact analysis, in general, will not be required of the applicant for those regulated pollutants which are not listed under "significant emissions increase" of this Chapter.

1. Monitoring

Monitoring done by the owner or operator shall conform to state and federal requirements and guidance.

2. Modeling.

a. All estimates of ambient concentrations required by an ambient or increment impact analysis shall be based on the relevant air quality models, data bases, and other requirements specified in state and federal guidance, to the extent quantifiable, shall be considered.

b. All preprocessed meteorological data used in refined modeling analyses shall be submitted to the Board in a computer format acceptable to the Board.

B. Renewal of a Minor or Major source permit

1. A previously submitted impact analysis shall be acceptable unless:

a. It has been found to be deficient with respect to requirements set forth in this Chapter;

- b. The impact analysis fails to reflect available information with respect to ambient air quality levels in the area, which, based upon the Board's expertise, may reasonably be expected to be significantly impacted by the source;
 - c. The source emits a regulated pollutant for which an ambient air quality standard has been adopted and whose impact was not addressed in the original impact analysis;
 - d. The renewal of the source is in conjunction with a minor or major modification which requires a modeling analysis pursuant to other sections of this Chapter; or
 - e. There are changes in stack or building configurations or other factors which are determined to significantly alter the dispersion characteristics of the source.
2. Continuation of an ambient air monitoring or meteorological monitoring program shall be made on a case-by-case basis at the time of the renewal. It shall be the burden of the applicant to demonstrate the adequacy of existing data, its relationship to past, present, and future facility operating conditions, and the adequacy of other means to document continuing compliance.
 3. An existing source shall be exempt from an impact analysis with respect to a regulated pollutant whose allowed emissions, after the application of control technology requirements do not exceed the following, unless the source is located in or near a Class I area or an area where the available air quality is limited, or other extenuating circumstances exist:
 - a. 50 tons per year (tpy) for SO₂;
 - b. 250 tpy for CO;
 - c. 25 tpy for PM₁₀ or TSP;
 - d. 100 tpy for NO_x (measured as NO₂);
 - e. 0.6 tpy for Lead (Pb); or
 - f. 0.2 tpy of total Chromium.

C. New Minor sources and Minor Modifications to Minor or Major Sources

This section shall apply to any new Minor source or Minor Modification of a Minor or Major source.

1. A new Minor source or an existing Minor source that previously was not required to submit an air quality impact analysis for an air emissions permit, but is undergoing a Minor Modification shall submit an air quality impact analysis for those regulated pollutants that the Minor source emits or has the potential to emit at levels equal to or greater than the limits in Section 13-307(B)(3) of this Chapter after the application of control technology requirements specified in Section 13-303 of this Chapter.
 - a. Ambient air quality standards analysis

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An ambient air quality standards analysis shall be submitted which includes dispersion modeling for each pollutant for which there is a Town of Jay or state ambient standard (except nonmethane hydrocarbons). The analysis also shall include ambient air monitoring, meteorological and topographic data necessary to estimate such impact, as well as an analysis of the impact of all other sources in the area with actual emissions of 100 tpy or more of the same pollutant. At a minimum, this analysis shall include all such sources that emit more than 100 tpy of a given regulated pollutant located within the lesser of 10 km or the area may reasonably be expected to be significantly impacted by the proposed new Minor source or Minor Modification of a Minor source.

b. Ambient increment analysis

An increment analysis shall be submitted to each pollutant for which there is an ambient increment standard. The analysis shall include meteorological and topographical data necessary to estimate such impacts, as well as an analysis of the air quality impacts and nature and extent of any or all general, commercial, residential, industrial and other growth, including increases in mobile source and area source emissions which has occurred since the baseline date, and therefore have consumed increment in the area where the new Minor source or Minor Modification of a Minor source will significantly impact. The analysis shall be conducted in accordance with the modeling provisions of this subsection.

2. The level of air quality analyses for any new Minor source or any Minor or Major source undergoing a Minor Modification which emits or has the potential to emit regulated pollutants at a rate less than the emission levels in Section 13-307(B)(3) of this Chapter, and the level of air quality monitoring for any new minor source or any minor modification to a minor or major source shall be determined on a case-by-case basis considering:

- a. Air quality data available in or representative of the area;
- b. Similarity with other permitted sources in terms of size, emissions, and local topography;
- c. Location, including proximity to Class I areas (increment consuming sources located within 25 kilometers of a Class I area may be required to conduct a Class I increment analysis), integral vistas, nonattainment areas or areas where increment has been substantially consumed; and
- d. The results of previous air quality analyses.

An analysis may be required, even in cases resulting in no increases in emissions, if a stack height is less than Good Engineering Practice or if there are changes in stack or building configurations or other factors which are determined to alter the dispersion characteristics of the Minor or Major source.

D. New Major sources and Major Modifications

This section shall apply to any new major source or any major modification which emits or has the potential to emit a significant emissions increase of any regulated pollutant.

1. Pre-construction monitoring
 - a. For those pollutants for which there is an ambient air quality standard (except nonmethane Hydrocarbons), the analysis shall consist of continuous air quality monitoring

data gathered over a period of one year and shall represent the year preceding the application. If the Board determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year, the application may be deemed acceptable for processing based on the data gathered over the shorter period. The period shall not be less than 4 months. The applicant must demonstrate that such shorter period, or period other than the preceding year, is representative of ambient concentrations under the seasonal conditions expected to record the highest concentrations.

b. For those pollutants for which no ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the Board determines is necessary and feasible in light of methods available to monitor such pollutants.

c. A new Major source or Major Modification shall be exempt from the preconstruction monitoring requirements of this subsection if the emissions increase of a pollutant would cause, in every area, air quality impacts less than the following amounts:

- i. Carbon Monoxide 575 $\mu\text{g}/\text{m}^3$, 8-hr average;
- ii. Nitrogen dioxide 14 $\mu\text{g}/\text{m}^3$, annual average;
- iii. Sulfur dioxide 13 $\mu\text{g}/\text{m}^3$, 24-hour average;

iv. Ozone--No de minimis air quality level is provided for ozone. Any Major sources having a net emissions increase of 100 tpy or more of Volatile Organic Compounds (excluding negligibly photochemically reactive VOC) shall conduct ambient air monitoring except that when such Major source satisfies the condition of 40 CFR Part 51, Appendix S, section IV, post-approval monitoring data for ozone may be substituted for preconstruction data;

- v. Lead 0.1 $\mu\text{g}/\text{m}^3$, 24-hr. average;
- vi. Mercury 0.25 $\mu\text{g}/\text{m}^3$, 24-hr. average;
- vii. Beryllium 0.0005 $\mu\text{g}/\text{m}^3$, 24-hr. average;
- viii. Fluorides 0.25 $\mu\text{g}/\text{m}^3$, 24-hr. average;
- ix. Vinyl chloride 15 $\mu\text{g}/\text{m}^3$, 24-hr. average;
- x. Total reduced sulfur 10 $\mu\text{g}/\text{m}^3$, 1-hr. average;
- xi. Hydrogen sulfide 0.4 $\mu\text{g}/\text{m}^3$, 1-hr. average;
- xii. Reduced sulfur compounds 10 $\mu\text{g}/\text{m}^3$, 1-hr.;
- xiii. Chromium 0.02 $\mu\text{g}/\text{m}^3$, 24-hr. average; and
- xiv. PM_{10} 10 $\mu\text{g}/\text{m}^3$, 24-hr. average.

d. Class I areas

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In addition to the impact analysis required in Sections 13-307(D)(2), (3), and (4) of this Chapter, the proposed New Major source or Major Modification subject to this subsection may be required to conduct monitoring to establish the condition of and impact on air quality related values (including visibility) in an affected Class I area(s), in the Town of Jay or integral vistas, both prior to completing an application for an emission permit and during construction and operation of such new Major source or Major Modification.

2. Ambient air quality standards analysis

An ambient air quality standards analysis shall be submitted which includes dispersion modeling for each pollutant for which there is a Town of Jay or State ambient standard (except nonmethane hydrocarbons). The analysis also shall include ambient air monitoring, meteorological and topographic data necessary to estimate such impact, as well as an analysis of the impact of all other sources in the area with actual emissions of 100 tpy or more of the same pollutant. At a minimum, this analysis shall include all such sources that emit more than 100 tpy of a given regulated pollutant located within the lesser of 10 km or the area, which, based upon the Board's expertise, may reasonably be expected to be significantly impacted by the proposed New Major source or Major Modification.

3. Ambient increment analysis

An increment analysis shall be submitted for each pollutant for which there is a Town of Jay or state ambient increment standard adopted. The analysis shall include meteorological and topographical data necessary to estimate such impacts, as well as an analysis of the air quality impacts and nature and extent of any or all general, commercial, residential, industrial and other growth, including increase in mobile source and area source emissions which has occurred since the baseline date, and therefore have consumed increment in the area where the new Major source or Major Modification will significantly impact. This analysis shall be conducted in accordance with the modeling provisions of this subsection.

4. Additional impact analysis

The proposed new major source or major modification shall provide an additional impact analysis of:

- a. The impairment to visibility, soils and vegetation that would occur as a result of the new major source or major modification and general, commercial, residential, industrial and other growth associated with the new Major source or Major Modification, except that an analysis of the impact on vegetation having no significant commercial or recreational value is not required;
- b. The air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the facility or modification; and
- c. The impact, including visibility impairment, on any Class I area or integral vista in the Town of Jay.

5. Post-construction monitoring

The owner or operator, shall after construction of the new major source or major modification, conduct such ambient monitoring or meteorological monitoring as the Board determines is necessary to determine the effect emissions from the new major source or major modification may have, or are having, on air quality in any area.

A major source or major modification shall be exempt from the requirements of this subsection if its emissions do not significantly impact a Class I area associated with the Town of Jay or an area where the increment is known to be violated or substantially consumed, and

- a. The allowable emissions increase will be temporary, not to exceed 2 years; and
- b. Any permitted portable source shall not increase, nor exceed, the allowable emissions and reasonable notice of not less than 10 working days prior to the relocation shall be given to the Board concerning its proposed location and probably duration of operation at the new location.

E. Modeling protocol

Any air quality dispersion modeling or data collection program shall be developed consistent with the following requirements:

1. Air quality dispersion modeling protocol. If impacts from SO₂, NO₂, CO and PM₁₀ are above significance or if there are other regulated pollutants to be modeled, then the applicant must provide in writing to the Board, a description of the following factors (if different from previously submitted data) that the applicant proposes to use in the air quality dispersion modeling.

- a. Operating scenarios and emission units (including other nearby sources, if necessary);
- b. Regulated air pollutants;
- c. Model(s) and methodologies;
- d. Origin of meteorological data;
- e. Period of meteorological record;
- f. Receptor grid (listing of coordinates and elevations plus topographic maps covering the receptor grid area);
- g. Any special (e.g., fenceline) receptors;
- h. Identity of emissions which are included in baseline emissions;
- i. Building dimension and Good Engineering Practice (GEP) analysis techniques; and
- j. Background concentration data.

The Board shall notify the applicant in writing that such information is complete and acceptable for modeling or notify the applicant in writing of the reason(s) why the information is not complete. When all submitted information is considered complete and acceptable for modeling, the applicant shall perform air quality dispersion modeling and submit for review the air quality dispersion modeling analysis as part of the final application submittal.

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Seventeenth, Sec. 100. Eighteenth, Sec. 44, 45, 46 and 47. Twenty-Second, Sec. 55.

PART 4

AMBIENT AIR QUALITY STANDARDS, INCREMENTS AND NONATTAINMENT

Section

- §13-400 Introduction
- §13-401 Particulate Matter
- §13-402 Sulfur Dioxide
- §13-403 Carbon Monoxide
- §13-404 Photochemical Oxidant
- §13-405 Hydrocarbon
- §13-406 Nitrogen Dioxide
- §13-407 Lead
- §13-408 Chromium
- §13-408-A Perchloroethylene
- §13-408-B Toluene
- §13-409 Increments
- §13-410 Increments Policy
- §13-411 Nonattainment

Seventeenth, Sec. 102. Eighteenth, Sec. 48.

§13-400 INTRODUCTION

The ambient air quality standards set forth in this Part, which are expressed in terms of 25 centigrade and 760 millimeters of mercury pressure, shall apply throughout the Town of Jay.

An applicant shall demonstrate that the ambient air quality standards will be met at all locations beyond the production area of the source. The production area exclusion shall not be applicable to a source whose purpose is to serve the general public or to any part of any applicant's property in which the general public has a right of access. The production area exclusion shall not be applicable to an expansion of a sources production area after December 31, 1970 unless the applicant demonstrates that

the expansion is due to business or commercial factors and is not sought to increase dispersion of emissions.

Fifth, Sec. 33. Eighteenth, Sec. 49.

§13-401 PARTICULATE MATTER

A. The maximum 24-hour particulate matter concentration shall not exceed 150 micrograms per cubic meter, as measured in the ambient air as PM₁₀, based on methods contained in Appendix M of 40 CFR Part 50, as amended, and as designated in accordance with 40 CFR Part 53 or a similar generally accepted measurement method approved by the Board on a case by case basis. The standards are attained when the 99th percentile 24-hour concentration is less than or equal to 150 micrograms per cubic meter as determined in accordance with Appendix N of 40 CFR Part 50, as amended, or a similar generally accepted measurement method approved by the Board.

B. The annual arithmetic mean for particulate matter shall not exceed 40 micrograms per cubic meter, as measured in the ambient air as PM₁₀ based on methods contained in Appendix M of 40 CFR Part 50, as amended, or a similar generally accepted measurement method approved by the Board. The standards are attained when the expected annual arithmetic mean concentration is less than or equal to 40 micrograms per cubic meter, as determined in accordance with Appendix N of 40 CFR Part 50, as amended, or a similar generally accepted measurement approved by the Board.

First, Sec. 111 and 128. Fifth, Sec. 34. Sixth, Sec. 67. Thirteenth, Sec. 61. Seventeenth, Sec. 103. Twentieth, Sec. 30.

§13-402 SULFUR DIOXIDE

A. Sulfur dioxide concentration for any 3-hour period at any location shall not exceed 1150 micrograms per cubic meter, except once per year.

B. Sulfur dioxide concentration for any 24-hour period at any location shall not exceed 230 micrograms per cubic meter, except once per year.

C. The annual arithmetic mean of the 24-hour average sulfur dioxide concentrations at any location shall not exceed 57 micrograms per cubic meter.

§13-403 CARBON MONOXIDE

A. Carbon monoxide concentration for any 8-hour period at any location shall not exceed 10 milligrams per cubic meter, except once per year.

B. Carbon monoxide concentration for any 1-hour period at any location shall not exceed 40 milligrams per cubic meter, except once per year.

§13-404 PHOTOCHEMICAL OXIDANT

Photochemical oxidant concentration (measured as ozone) for any 8-hour period at any location shall not exceed 0.08 parts per million. The ozone 8-hour standards are attained when the average of the annual

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fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 parts per million using methods set forth in Appendix I of 40 CFR Part 50, as amended, or other similar generally accepted methods approved by the Board.

Seventeenth, Sec. 104. Eighteenth, Sec. 50. Twentieth, Sec. 31.

§13-405 HYDROCARBON

Hydrocarbon concentration for any 3-hour period at any location shall not exceed 160 micrograms per cubic meter, except once per year.

§13-406 NITROGEN DIOXIDE

The annual arithmetic mean of the 24-hour average nitrogen dioxide concentration at any location shall not exceed 100 micrograms per cubic meter.

§13-407 LEAD

The maximum 24-hour lead concentration at any location shall be 1.5 micrograms per cubic meter, which standard may be exceeded once per year.

§13-408 CHROMIUM

A. Until the time that an analytical procedure for measuring hexavalent chromium in the ambient air is approved:

1. The maximum 24-hour total chromium concentration at any location shall not exceed 0.3 micrograms per cubic meter; and
2. The annual geometric mean of the total chromium concentrations at any location shall not exceed 0.05 micrograms per cubic meter.

B. Subsequent to the establishment of an acceptable analytical procedure for measuring hexavalent chromium in the ambient air:

The maximum 24-hour ambient air quality impact of hexavalent chromium from a potential source of hexavalent chromium air emissions, as defined in Maine law, shall not exceed the minimum detection limit of that procedure or 1.0 nanogram per cubic meter, whichever is greater.

§13-408-A PERCHLOROETHYLENE

The maximum annual concentration of perchloroethylene at any location may not exceed 0.01 micrograms per cubic meter.

Seventeenth, Sec. 105.

§13-408-B TOLUENE

- A. The maximum concentration of toluene for any 15 minute period at any location may not exceed 15,000 micrograms per cubic meter.
- B. The maximum concentration of toluene for any 24-hour period at any location may not exceed 260 micrograms per cubic meter.
- C. The maximum annual concentration of toluene at any location may not exceed 180 micrograms per cubic meter.

Seventeenth, Sec. 106.

§13-409 INCREMENTS

In addition to the ambient air quality standards the Town of Jay shall be subject to a maximum allowable increase in concentrations of particulate matter and sulfur dioxide over the baseline concentration of that pollutant, which increase shall not be exceeded more than once annually for any period other than an annual period. The maximum allowable increase shall consist of:

A. PM10. In regards to particulate matter:

- 1. An increase in the annual mean at any location not to exceed 17 micrograms per cubic meter; and
- 2. An increase in concentration for any 24-hour period at any location not to exceed 30 micrograms per cubic meter; and

B. Sulfur dioxide. In regards to sulfur dioxide:

- 1. An increase in the annual arithmetic mean at any location not to exceed 20 micrograms per cubic meter; and
- 2. An increase in concentration for any 24-hour period at any location not to exceed 91 micrograms per cubic meter; and
- 3. An increase in concentration for any 3-hour period at any location not to exceed 512 micrograms per cubic meter.

B-1. Nitrogen oxides. In regards to nitrogen oxides:

An increase in the annual arithmetic mean at any location not to exceed 25 micrograms per cubic meter to be expressed as nitrogen dioxide.

C. Exclusions from the Increment.

- 1. Concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of an order which is in effect under the provisions of sections 2 (a) and (b) of the Federal

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Energy Supply and Environmental Coordination Act of 1974 over the emissions from such sources before the effective date of such order;

2. Concentrations of total suspended particulate attributable to the increase in emissions from construction or other temporary emission-related activities; and
3. The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration.

First, Sec. 112. Eighth, Sec. 27. Thirteenth, Sec. 62. Seventeenth, Sec. 107.

§13-410 INCREMENTS POLICY

It shall be the policy of the Town of Jay that no more than 75% of any increment shall be allocated to any source. The Board may grant a variance to this 75% limits for good cause shown based on a consideration of the duration and degree of the proposed variance to the 75% limit, whether the applicant has explored alternatives to reduce emissions, and after a demonstration that the source will provide a significant public environmental benefit.

Twentieth, Sec. 32.

§13-411 OZONE CLASSIFICATION

The Town of Jay is currently located within the Ozone Transport Region. The Town of Jay's ozone attainment status shall be determined by the United States Environmental Protection Agency's ozone attainment classification for regions within the State of Maine. Emissions of Volatile Organic Compounds and Nitrogen Oxide are the nonattainment pollutants for ozone.

First, Sec. 113. Seventeenth, Sec. 108. Twentieth, Sec. 33.

PART 5

EMISSION STANDARDS

Section

- §13-501 Fuel-burning Equipment Particulate Emission Standard
- §13-502 General Process Source Particulate Emissions
- §13-503 Total Reduced Sulfur Emissions
- §13-504 Visible Emissions
- §13-505 Chromium Particulate Emission Standard

- §13-506 Chlorine and Chlorine Dioxide Emission Standard
- §13-507 Paper Coating Line Emissions
- §13-508 New Source Performance Standards
- §13-509 Prevention Of Significant Deterioration (PSD) And Nonattainment New Source Review (NSR)

Seventeenth, Sec. 109. Twentieth, Sec. 34. Twenty-Second, Sec. 56.

The emission standards set forth in this part shall apply throughout the Town of Jay.

§13-501 FUEL-BURNING EQUIPMENT PARTICULATE EMISSION STANDARD

A. Scope.

This chapter shall apply to all fuel burning or solid waste fuel burning equipment located in the Town of Jay and having a rated capacity of 3 million B.T.U. per hour or greater.

B. Emission Standards.

1. Any source which applied for a Maine air emission license prior to December 22,1982 shall limit particulate emissions as follows:

a. Oil-Gas-Petroleum Burning. Any source burning distillate or residual fuel oil, gas, or other petroleum product shall not exceed 0.20 lbs. particulate per million B.T.U. Any source which cannot achieve the 0.20 lbs. particulate per million B.T.U. limit will be allowed to operate at that higher emission rate, but not to exceed 0.30 lbs. particulate matter per million B.T.U., if it installs automatic fuel viscosity controls integrated into the fuel oil controls and combustion efficiency instrumentation or equivalent alternative procedure approved by the Board. The source will be allowed a period of one year from the date of demonstration of noncompliance to install the controls.

b. Coal Burning.

(1) Any coal burning source with a heat input capacity of less than 50 million B.T.U./Hr. shall not exceed 0.30 lbs. particulate per million B.T.U.

(2) Any coal burning source including one presently burning oil but designed to burn coal with a heat input capacity of 50 million BTU/Hr. or greater shall not exceed 0.08 lbs. particulate per million B.T.U.

c. Wood Burning

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(1) Any source designed to burn wood, bark, chips, sawdust, pulp mill sludge, or similar forest product (including those with supplementary oil firing capabilities) with a heat input capacity of less than 150 million B.T.U./Hr. shall not exceed an emission rate defined according to the following equation (even during periods of burning only oil):

$$\log y = 0.034 - 0.256 \log x$$

where Y = allowable emission rate expressed in lbs. particulate per million B.T.U.

x = equipment capacity expressed in millions of B.T.U.s /hour.

(2) Any source designed to burn wood, bark, chips, sawdust, pulp mill sludge, or similar forest product (including those with supplementary oil firing capabilities) with a heat input capacity of 150 million B.T.U./Hr. or greater shall not exceed 0.30 lbs. particulate matter per million B.T.U. (even during periods of burning only oil).

d. Solid Waste. Any source burning refuse, garbage, trash, or any combination of municipal or industrial solid waste shall not exceed 0.08 grains per standard cubic foot of dry flue gas for a 2-hour sampling period, corrected to 12% carbon dioxide without the contribution of carbon dioxide from the auxiliary fuel.

2. Any fuel burning equipment, the owner of which applied for a Maine air emission license after December 22, 1982, shall limit particulate emissions as follows:

a. Oil-Gas-Petroleum Burning.

(1) Any source burning distillate or residual fuel oil, gas, or other petroleum product with a heat input capacity of less than 50 million B.T.U./Hr. shall not exceed 0.12 lbs. particulate per million B.T.U.

(2) Any source burning distillate or residual fuel oil, gas, or other petroleum product with a heat input capacity of 50 million B.T.U./Hr. or greater but less than 250 million B.T.U./Hr. shall not exceed 0.08 lbs. particulate per million B.T.U.

(3) Any source burning distillate or residual fuel oil, gas, or other petroleum product with a heat input capacity of 250 million B.T.U. /Hr. or greater shall not exceed 0.06 lbs. particulate per million B.T.U.

b. Solid Waste Burning.

(1) Any source burning refuse, garbage, trash, or any combination of municipal or industrial solid waste with a heat input capacity of less than 50 million B.T.U./ Hr. shall not exceed 0.30 lbs. particulate per million B.T.U.

(2) Any source burning refuse, garbage, trash or any combination of municipal or industrial solid waste with a heat input capacity of 50 million B.T.U./Hr. or greater but less than 250 million B.T.U./Hr. shall not exceed 0.20 lbs. particulate per million B.T.U.

(3) Any source burning refuse, garbage, trash, or any combination of municipal or industrial solid waste with a heat input capacity of 250 million B.T.U./Hr. or greater shall not exceed 0.10 lbs. particulate per million B.T.U.

c. Coal Burning.

(1) Any coal burning source with a heat input capacity of less than 50 million B.T.U./Hr. shall not exceed 0.30 lbs. particulate per million B.T.U.

(2) Any coal burning source with a heat input capacity equal to or greater than 50 million B.T.U./Hr. but less than 250 million B.T.U./Hr. shall not exceed 0.08 lbs. particulate per million B.T.U.

(3) Any coal burning source with a heat input capacity of 250 million B.T.U./Hr. or greater shall not exceed 0.05 lbs. particulate per million B.T.U.

d. Wood-Coal-Biomass.

(1) Any biomass boiler, so called, designed to burn wood, bark, coal, sludge, petroleum product, or other such combustible fuel, alone or in combination, with a heat input capacity of less than 50 million B.T.U./Hr. shall not exceed 0.30 lbs. particulate per million B.T.U.

(2) Any biomass boiler, so called, designed to burn wood, bark, coal, sludge, petroleum product, or other such combustible fuel, alone or in combination, with a heat input capacity of 50 million B.T.U./ Hr. or greater but less than 250 million B.T.U./Hr. shall not exceed 0.08 lbs. particulate per million B.T.U. when burning the primary fuel or fuel combinations within the range of design rate proportions. When burning a fuel other than the primary design fuel or a combination of fuels outside the range of design rate proportions the particulate emissions shall not exceed 0.10 lbs. particulate per million B.T.U. provided the particulate matter control equipment is being operated to maximize particulate removal.

(3) Any biomass boiler, so called, designed to burn wood, bark, coal, sludge, petroleum product, or other such combustible fuel, alone or in combination, with a heat input capacity of 250 million BTU /Hr. or greater shall not exceed 0.06 lbs. particulate per million BTU when burning the primary fuel, or fuel combinations within the range of design rate proportions. When burning a fuel other than the primary design fuel, or a combination of fuels outside the range of design rate proportions, the particulate emissions shall not exceed 0.10 lbs. particulate per million BTU, provided the control equipment is being operated and maintained to maximize particulate removal.

(4) Any biomass boiler, so called, designed to burn wood, coal, sludge, petroleum product, or other such combustible fuel, alone or in combination, with a heat input capacity of 50 million BTU/Hr. or greater, which uses a venturi scrubber providing 75% or greater Sulfur Dioxide removal, shall be exempt from the provisions of Section 13-501(B)(2)(d)(2) and Section 13-501(B)(2)(d)(3) and shall not exceed 0.10 lbs. particulate per million B.T.U.

C. Exemptions.

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Any source, the owner of which applied for a Maine air emission license after December 22, 1982, but which equipment has been previously owned and operated, shall be exempt from the provisions of Section 13-501(B)(2) and will be subject to case-by-case emission limitations not to exceed the respective emission limitations of Section 13-501(B)(1).

First, Sec. 114, 115, 116, 117, 118 and 119. Sixth, Sec. 68 and 69. Seventeenth, Sec. 110, 111, 112 and 113.

§13-502 GENERAL PROCESS SOURCE PARTICULATE EMISSIONS

A. Kraft Pulping Processes. Any person operating any kraft pulping process shall limit the emission of particulate air contaminants from such emission source as follows:

Four pounds of particulate emissions per air dried ton of kraft pulp from the recovery boiler; one pound of particulate air contaminants per air dried ton of kraft pulp from the lime kiln; 0.5 pound of particulate air contaminants per air dried ton of kraft pulp from the smelt tank during any continuous 2-hour period.

B. Other processes. Any person operating any general process sources, except kraft processes, shall limit the emission of particulate air contaminants from such source according to the following table. All similar units, processes operated by the same person at the same general location, shall be combined in computing the process weight rate for use in Table 1.

TABLE I

Process Weight Rate	Emission Rate (lbs./hr.)
50	0.36
100	0.55
500	1.53
1,000	2.25
5,000	6.34
10,000	9.73
20,000	14.99
60,000	29.60
80,000	31.19
120,000	33.28
160,000	34.85
200,000	36.11
400,000	40.35
1,000,000	46.72

Interpolation of Table I for process weight rates up to 60,000 lbs./hr. shall be computed by use of the following equation:

$$E=3.59P^{0.62}$$

for P less than or equal to 30 tons/hr.

and interpolation and extrapolation of Table I for rates in excess of 60,000 lbs./hr. shall be computed by use of the equation:

$$E=17.31P^{0.16}$$

for P greater than 30 tons /hr.

Where E = emissions in pounds per hour and P = process weight rate in tons per hour.

Seventeenth, Sec. 114.

§13-503 TOTAL REDUCED SULFUR EMISSIONS FROM EXISTING KRAFT PULP MILLS

A. Scope. These emission limits apply to the following existing processes in kraft pulp mills: digester system, multiple-effect evaporator system, recovery furnace, smelt dissolving tank, lime kiln, brown stock washer system, and condensate stripper system. Kraft pulp mills may also be subject to the United States Environmental Protection Agency's New Source Performance Standard for Kraft Pulp Mills, 40 CFR Part 60, Subpart BB.

B. Standards. No owner or operator subject to this regulation shall cause to be discharged into the atmosphere:

1. From any digester system, multiple-effect evaporator system or condensate stripper system, or after June 1, 1996, from any brown stock washer system, any gases which contain TRS in excess of 5 ppm by volume on a dry basis on a 12 hour block average unless the following conditions are met:
 - a. The gases are combusted in a lime kiln subject to the provisions of paragraph (6) below and may also be subject to the requirements of 40 CFR part 60.283(a)(5); or
 - b. The gases are combusted in a recovery furnace subject to the provisions of paragraphs (2), (3) or (4) below and may also be subject to the requirements of 40 CFR Parts 60.283(a)(2) or (a)(3); or
 - c. The gases are combusted with other waste gases in an incinerator or other device, and are subjected to a minimum temperature of 1200 degrees F for at least 0.5 seconds; or
 - d. The gases from the digester system, multiple-effect evaporator system, condensate stripper system, or after June 1, 1996, brown stock washer system, are controlled by a means other than combustion. In this case, the non-combustion system shall not discharge any gases to the atmosphere which contain TRS in excess of 5 ppm by volume on a dry basis, corrected to the actual oxygen content of the untreated gas system on a 12 hour block average.
 - e. An owner or operator of a brown stock washer system may petition the Board for an exemption to the brown stock washer TRS control requirements in instances where the brown stock washer system units have a TRS mass flow rate of less than or equal to 0.5 lb/hr.

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The affected systems of this subsection, with the exception of the brown stock washer system, shall have a primary control strategy and a backup strategy that meets the requirements of this subsection. The backup system shall be employed as expeditiously as practical but not later than 40 minutes after the primary system's malfunction or shutdown.

The control of any brown stock washer system subject to this regulation shall require 95% uptime based on quarterly brown stock washer system operation time.

2. From any new design straight kraft recovery furnace equipped with either a dry-bottom ESP or a wet-bottom ESP employing water, any gases which contain TRS in excess of 5 ppm by volume on a dry basis, corrected to 8 percent oxygen.
3. From any new design straight kraft recovery furnace with a wet-bottom ESP employing black liquor, any gases which contain TRS in excess of 15 ppm by volume on a dry basis, corrected to 8 percent oxygen.
4. From any old design straight kraft recovery furnace, any gases which contain TRS in excess of 20 ppm by volume on a dry basis, corrected to 8 percent oxygen.
5. From any smelt dissolving tank, any gases which contain TRS in excess of 0.016g/kg black liquor solids as H₂S (0.033 lb/ton black liquor solids as H₂S).
6. From any lime kiln, any gases which contain TRS in excess of 20 ppm by volume on a dry basis, corrected to 10 percent oxygen.
7. Compliance with the TSR emission standards in this section are based on 12 hour block averages meaning the discrete 12 hour periods from noon to midnight and midnight to noon.
8. All concentration of TRS required to be measured from lime kilns, incinerators, or other combustion devices shall be corrected to ten (10)% oxygen by volume and those concentrations from recovery furnaces shall be corrected to eight (8)% oxygen by volume. These corrections shall be made in the following manner:

$$\text{corr} = \text{meas} \times (21 - X) / (21 - Y)$$

Where: corr = The concentration corrected for oxygen.

meas = The concentration uncorrected for oxygen.

X = The volumetric oxygen concentration in percentage to be corrected to eight (8)% for recovery furnaces and ten (10)% for lime kilns, incinerators, or other combustion devices.

Y = The measured twelve (12)-hour block average volumetric oxygen concentration.

C. Effective date.

Compliance with the provisions of this regulation shall be met, unless otherwise specified in the regulation, by January 8, 1991.

D. Reporting.

1. Any owner or operator subject to this Section must report to the Board, according to Chapter 3, the direct venting to the atmosphere for longer than fifteen minutes of any TRS laden gas stream subject to this Section.
2. In addition to the other reporting requirements set forth in Chapter 3 and Chapter 13, any owner or operator subject to this Section must submit quarterly reports to the Board documenting all excess emissions including recorded concentrations and continuous emissions monitoring downtimes based on the standards set forth in subsection B of this Section.

For emissions from any digester system, multiple-effect evaporator system, condensate stripper system, or brownstock washer system, periods of excess emissions are:

- (1) Except where the requirements of subsection B (1) (a), (b) or (c) of this Section are met, all twelve (12)-hour block average TRS concentrations above five (5) ppm by volume dry basis;
 - (2) Where the requirements of subsection B(1) (c) of this Section apply, all periods in excess of five (5) minutes and their durations during which the combustion temperature at the point of incineration is less than 1200 degrees F.
3. Where the requirements of subsection B of this Section apply, report all periods and their durations where the TRS emissions are emitted uncontrolled or directly vented for periods longer than fifteen (15) minutes.
 4. The percent of the total number of possible contiguous twelve (12) hour block averaging periods in a quarter must include periods of startup, shutdown or malfunction, but excludes periods when the facility is not operating, and for which the twelve (12) hour block average exceeds the applicable emission limit must not exceed the following:
 - (1) One (1)% for TRS emissions from recovery furnaces; or
 - (2) Two (2)% for TRS emissions from lime kilns

Sixth, Sec. 70. Eighth, Sec. 28. Eleventh, Sec. 23 and 24. Twelfth, Sec. 2. Sixteenth, Sec. 4. Seventeenth, Sec. 115. Eighteenth, Sec. 51.

§13-504 VISIBLE EMISSIONS

A. Fuel Burning Equipment. Equipment shall be subject to one of the standards in this section based upon the primary fuel licensed for the unit:

1. Boilers Firing #4, #5, #6 Fuel Oil.
 - a. Visible emissions from any unit firing #4, #5, or #6 fuel oil whose rated input

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capacity is less than 1000 million BTU/hr shall not exceed an opacity of 30 percent on a six (6) minute block average basis, except for no more than two (2) six (6) minute block averages in a 3-hour period.

b. Visible emissions from any unit firing #4, #5, or #6 fuel oil whose rated input capacity is 1000 million BTU/hr or greater shall not exceed an opacity of 20 percent on a six (6) minute block average basis for 90 percent of all six (6) minute block averages on a quarterly basis. The remaining 10 percent of all six (6) minute block averages on a quarterly basis shall be no greater than 30 percent opacity. Quarterly basis is the period of time from January 1 to March 31, April 1 to June 30, etc. A unit subject to this section shall be required to operate and maintain a COMS.

2. Boilers Firing #2 Fuel Oil. Visible emissions from any unit firing #2 fuel oil shall not exceed an opacity of 20 percent on a six (6) minute block average basis, except for no more than one (1) six (6) minute block average in a 3-hour period.

3. Boilers Firing Natural Gas or Propane. Visible emissions from any unit firing natural gas or propane shall not exceed an opacity of 10 percent on a six (6) minute block average basis, except for no more than one (1) six (6) minute block average in a 3-hour period.

4. Stationary Internal Combustion Engines. Visible emissions from any stationary internal combustion engine manufactured after the year 2000 shall not exceed an opacity of 20 percent on a six (6) minute block average basis, except for no more than two (2) six (6) minute block averages in a 3-hour period.

5. Wood Waste/Biomass Units. Visible emissions from any wood waste or biomass unit shall not exceed an opacity of 30 percent on a six (6) minute block average basis, except for no more than two (2) six (6) minute block averages in a 3-hour period.

6. Visible emissions from any fuel burning equipment not specifically listed in this section shall not exceed an opacity of 30 percent on a six (6) minute block average basis, except for no more than two (2) six (6) minute block averages in a 3-hour period.

For any fuel burning equipment monitored by Continuous Opacity Monitor Systems (COMS) that are not subject to 40 CFR Part 60, 63 and 75, the COMS shall record opacity on a six (6) minute block average basis, and the 3-hour period shall be a 3-hour block period beginning from midnight to 3:00, from 3:00 to 6:00, from 6:00 to 9:00, etc. For any fuel burning equipment not monitored by COMS the 3-hour period shall be any continuous 3-hour period.

B. Kraft Recovery Boilers. Kraft recovery boilers shall meet the following requirements.

1. Sources shall meet one of the following as specified in the source's air emission license.

a. Visible emissions from any kraft recovery boiler shall not exceed an opacity of 30 percent on a six (6) minute block average basis, except for no more than one (1) six (6) minute block average in a 3-hour period, or

b. Visible emissions from any kraft recovery boiler shall not exceed an opacity of 20 percent on a six (6) minute block average basis for 98 percent of all six (6) minute block averages on a quarterly basis and 99 percent of all six (6) minute block averages on a four consecutive quarter basis. Periods of start-up, shutdown and malfunctions are included for the purpose of calculating six (6) minute block averages over 20 percent under this subsection. Quarterly basis is the period of time from January 1 to March 31, April 1 to June 30, etc. The source will be subject to Section 13-504(B)(2) when the source chooses this option.

2. Beginning March 12, 2004, Kraft Recovery Boiler units are required to implement corrective action, as specified in the startup, shutdown, and malfunction plan prepared for each unit under 40 CFR 63.866(a), when the average of ten (10) consecutive six (6) minute block averages results in a measurement greater than 20 percent opacity.

For any kraft recovery boiler monitored by COMS, the COMS shall record opacity on a six (6) minute block average basis, and the 3-hour period shall be a 3-hour block period beginning from midnight to 3:00, from 3:00 to 6:00, from 6:00 to 9:00, etc.

C. General Process Source.

1. Visible emissions from baghouses, excluding asphalt batch plant baghouses, shall not exceed an opacity of 10 percent on a six (6) minute block average basis, except for no more than one (1) six (6) minute block average in a 1-hour period. The facility shall take corrective action if visible emissions from the baghouses exceed five (5) percent opacity.

2. Visible emissions from any general process source not specifically listed in this section shall not exceed an opacity of 20 percent on a six (6) minute block average basis, except for no more than one (1) six (6) minute block average in a 1-hour period.

For any general process source monitored by COMS that are not subject to 40 CFR Part 60 and 63, the COMS shall record opacity on a six (6) minute block average basis, and the 1-hour period shall be a 1-hour period beginning from midnight to 1:00, from 1:00 to 2:00, from 2:00 to 3:00, etc. For any general process source not monitored by COMS the 1-hour period shall be any continuous 1-hour period.

D. Fugitive Emission Sources.

1. Visible emissions from a fugitive emission source shall not exceed an opacity of 20 percent, except for no more than five (5) minutes in any 1-hour period. Compliance shall be determined by an aggregate of the individual fifteen (15)-second opacity observations which exceed 20 percent in any one (1) hour.

E. Combined Stack Emissions. Except as provided for in subsection 13-504(F)(2), visible emissions from two or more of any combination of sources subject to this Chapter, which are operating and emitting visible air contaminants through one stack or vent, shall meet one of the following limits as specified in the source's air emission license.

1. The common stack opacity shall not exceed an opacity of 30 percent recorded as six (6)

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minute block averages, except for no more than three (3) six (6) minute block averages in a 3-hour block period; or

2. The common stack opacity shall not exceed 30 percent opacity on a six (6) minute block average basis for 98 percent of all six (6) minute block averages on a quarterly basis. In addition, the common stack opacity shall not exceed 40 percent opacity on a six (6) minute block average basis for 99.5 percent of all six (6) minute block averages on a quarterly basis. Periods of start-up, shutdown and malfunctions are included for the purpose of calculating block averages under this subsection. Quarterly basis is the period of time from January 1 to March 31, April 1 to June 30, etc., as specified in the source's air emission license. Only sources which use COMS may, at their option, be subject to this paragraph; or

3. The common stack opacity for sources operating below 50% of the boiler load capacity that the common stack was designed for, based on a 12-month rolling total, shall not exceed 30 percent opacity on a six (6) minute block average basis for 95 percent of all six (6) minute block averages on a quarterly basis. In addition, the common stack opacity shall not exceed 40 percent opacity on a six (6) minute block average basis for 99 percent of all six (6) minute block averages on a quarterly basis. Periods of start-up, shutdown and malfunctions are included for the purpose of calculating block averages under this subsection. Quarterly basis is the period of time from January 1 to March 31, April 1 to June 30, etc., as specified in the source's air emission license. Only sources which use COMS may, at their option, be subject to this paragraph.

For any combined stack emissions monitored by COMS that are not subject to 40 CFR Part 60, 63 and 75, the COMS shall record opacity on a six (6) minute block average basis, and the 3-hour period shall be a 3-hour block period beginning from midnight to 3:00, from 3:00 to 6:00, from 6:00 to 9:00, etc. For any combined stack emissions not monitored by COMS the 3-hour period shall be any continuous 3-hour period. Sources which emit through a combined stack subject to this section are not subject to the standards applicable to individual sources elsewhere in this Chapter.

F. Fuel burning sources that are restricted to less than 20 percent capacity on an annual basis.

1. Visible emissions from any fuel burning source shall not exceed an opacity of 30 percent on a six (6) minute block average basis, except for no more than two (2) six (6) minute block averages in a 3-hour period.

2. Visible emissions from any fuel burning source comprised of two or more units emitted through one stack shall not exceed an opacity of 40 percent on a six (6) minute block average basis, except for no more than three (3) six (6) minute block averages in a 2-hour period.

First, Sec. 120. Eighteenth, Sec. 52. Twenty-First, Sec. 27.

§13-505 CHROMIUM PARTICULATE STANDARD

A. Emissions Standards.

The emission standards for any potential source of hexavalent chromium air emissions shall represent the lowest emission rate for hexavalent chromium which is technologically achievable. The emissions standards will be decided on a case-by-case basis, with the following conditions representing the minimum requirements:

1. Any potential source of hexavalent chromium air emissions must demonstrate compliance with the air quality standards;
2. If a source cannot demonstrate to the satisfaction of the Board a technique for measuring hexavalent chromium at the emission source, its modeled air quality impact shall be derived from its total chromium emissions and shall not exceed a 24-hour ambient concentration of 25 nanograms per cubic meter;
3. The modeled impact derived from hexavalent chromium emissions shall not exceed the limits specified in Section 13-408 of this Ordinance.

B. Exemptions.

Chromium emissions resulting from metal plating operations, the preparation of chrome tanning liquors, or from processes, including leather processing, in which chromium is present only in the trivalent oxidation state shall not be subject to these emission requirements.

§13-506 CHLORINE AND CHLORINE DIOXIDE EMISSION STANDARD

A. Scope. This regulation applies to all bleach plants of all existing pulp and paper making facilities.

B. Standard.

1. Chlorine. No person shall emit or cause to be emitted into the ambient air from all bleach plants of any pulp and paper making facility chlorine emissions greater than 3.0 pounds per hour.
2. Chlorine Dioxide. No person shall emit or cause to be emitted into the ambient air from all bleach plants of any pulp and paper making facility chlorine dioxide emissions greater than 3.0 pounds per hour.

C. Continuous Emissions Monitoring. Any owner or operator, of a pulp and paper making facility subject to the provisions of this Section shall install, calibrate, operate and maintain in good working order a continuous emission monitoring system as approved by the Board to monitor and record the emissions of chlorine inclusive of chlorine dioxide. This shall be effective upon the Board's determination that continuous emission monitors for the compound in question is demonstrated as both available and of sufficient quality for the purpose of compliance determination. The affected facilities shall have 180 days from the Board's decision to require continuous emission monitors to comply with this Section unless otherwise ordered by the Board.

D. Emissions Control. If scrubbers are employed to attain the standards in subsection B, any owner or operator of a pulp and paper facility subject to this Section shall install, calibrate, operate and maintain continuous scrubber recycle flow, Oxidation Reduction Potential, (ORP), scrubber

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pressure drop, and pH meters. Other measurement methods that provide for a measure of scrubbing media chlorine and chlorine dioxide uptake ability may be utilized with the approval of the Board.

Eighth, Sec. 29. Eleventh, Sec. 25. Seventeenth, Sec. 116.

§13-507 PAPER COATING LINE EMISSIONS

A. Scope. This regulation applies to all roll, knife and rotogravure coaters and drying ovens of paper coating lines at stationary sources of volatile organic compounds.

B. Standards. The owner or operator of a paper coating line subject to this regulation shall comply with one of the following limitations:

1. Low Solvent Content Coating Technology. The owner or operator of a paper coating line subject to this regulation shall not cause or allow or permit the discharge into the atmosphere from any coating volatile organic compounds (VOC) in excess of 2.9 pounds of VOC per gallon of coating (excluding water and negligibly reactive VOC) delivered to the coating applicator from a paper coating line.

2. Add-on Air Pollution Control Device. The owner or operator of a paper coating line subject to this regulation which is controlled by an add-on air pollution control device shall operate the add-on control device at all times the paper coating line is operating such that the overall efficiency of the abatement equipment (the efficiency of the capture system multiplied by the efficiency of the control device) reduces the VOC emission to a rate equal to 4.8 pounds VOC emitted per gallon of solids applied to the substrate on a continuous basis.

Eighth, Sec. 30.

§13-508 NEW SOURCE PERFORMANCE STANDARDS

Any new source subject to this Chapter must not violate New Source Performance Standards set forth in 40 CFR Part 60; subparts A, D, Da, Db, Dc, E, K, Ka, Kb, O, BB, GG and Appendices, which are incorporated by reference herein.

First, Sec. 121. Eighth, Sec. 31. Tenth, Sec. 39. Eleventh, Sec. 26. Seventeenth, Sec. 117. Twentieth, Sec. 35.

§13-509 PREVENTION OF SIGNIFICANT DETERIORATION (PSD) AND NONATTAINMENT NEW SOURCE REVIEW (NSR)

Any source subject to this Chapter shall be subject to applicable provisions of Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR) as set forth in 40 CFR Parts 51 and 52, which are incorporated by reference herein.

Twenty-First, Sec. 28.

PART 6

OFFSET REQUIREMENTS

Section

- §13-601 Scope
- §13-602 Use of Offset Credits
- §13-603 Generation of Offset Credits
- §13-604 Quantification of Offset Credits for Credit Generators

Seventeenth, Sec. 118. Twentieth, Sec. 36.

§13-601 SCOPE

A. General

1. Offset credits are the method as set forth in this Part, by which excess emissions reductions of a nonattainment pollutant at one source are used to “offset” the potential emission increase from a new source or modification to produce a positive net air quality benefit. The offset credit must be greater than the potential emission increase from a new source or modification including growth and secondary emissions (except where superseded by a higher ratio requirement as set forth in this Part).

B. Applicability

1. The following sources that seek to locate or expand within the geographical bounds of the Town of Jay must obtain offset credits as provided for in this Part:
 - a. Any new source or proposed new source that has the potential to emit significant emissions of the nonattainment pollutant after application of Lowest Achievable Emission Rate (LAER);
 - b. Any existing source that is a major source for the nonattainment pollutant, which has or is proposing a modification that would result in a significant emissions increase of the nonattainment pollutant after application of LAER;
 - c. Any existing source that is a minor source for the nonattainment pollutant, which has or is proposing a modification that would result in an increase of the source’s potential to emit the nonattainment pollutant by a level of significant emissions after application of LAER; or
 - d. Any source for which b or c above occurs by virtue of a relaxation after August 7, 1980 of any federally enforceable limitation or license condition.

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2. Sources that seek to voluntarily generate and/or trade offset credits will be subject to provisions in this Part pertaining to generation of offset credits.

C. Exemptions

1. Offsets for NO_x emissions are not required in those areas that have received a waiver of certain NO_x controls from the United States Environmental Protection Agency under Section 182(f) of the Clean Air Act.

First, Sec. 122. Seventeenth, Sec. 119. Eighteenth, Sec. 53. Twentieth, Sec. 37.

§13-602 USE OF OFFSETS

A. General

1. For sources that have a Jay Air Emission Permit, offset credits must be certified by the Board before use as offset credits.
2. All trades involving VOC offset credits or an increase in VOC emissions requiring offsets pursuant to this Part must be presented to the Board for Board approval.
3. Use of offset credits is subject to all other applicable laws.

B. Use of Offset Credits

1. Sources that are subject to this Part must obtain offset credits for that non-attainment pollutant to provide a positive net air quality benefit and may not commence operation until the Board determines that emission reductions of the nonattainment pollutant have occurred and that all requirements of this Part are met. Offset credit reduction must be federally enforceable by the time the air emission permit for the user is approved by the Board.

2. NO_x and Volatile Organic Compound (VOC) Offset Credits

a. For a new source or modification subject to this Part, the offset ratio for VOC and NO_x is based on the current ozone nonattainment area classification or other designation for the area in which the new source or modification will locate, and on the distance between the new source or modification and the source from which offsets are obtained, as specified below. If the location of a new source or modification is subject to more than one classification, the more restrictive offset ratio shall apply.

b. NO_x offset credits may be used to offset increased VOC emissions, and VOC offset credits may be used to offset increased NO_x emissions, if approved by the USEPA, the State, and the Board. In areas subject to a NO_x waiver under section 182(f) of the Clean Air Act, NO_x credits may be used to offset VOC emissions to the extent allowed under the Clean Air Act and upon written notification of approval from the USEPA. The same number of offset credits must be obtained whether NO_x or VOC credits are used. The Board shall only approve offset credits if the same estimated ozone reduction will be achieved whether VOC offset credits or NO_x offset credits are used.

c. Offset credits for VOC and NO_x shall be obtained from sources in the same ozone nonattainment area or area previously designated as nonattainment for the 1-hour standard, or attainment area, except that such offset credits may be obtained from a source in another ozone nonattainment area or attainment area if the condition of either sub-paragraph i or ii below, whichever is relevant, are met:

i. For a new source or modification subject to this Part, locating in an ozone nonattainment area or area previously designated as nonattainment for the 1-hour standard:

(a) The ozone nonattainment area from which offset credits are obtained has an equal or higher (i.e. more serious) nonattainment classification than the ozone nonattainment area in which the new source or modification subject to this Part is locating; and

(b) Emissions from the ozone nonattainment area from which offset credits are obtained contribute to a violation of the National Ambient Air Quality Standard in the ozone nonattainment area in which the new source or modification subject to this Part is locating; and

(c) Offset credits are obtained based on the classification of the area in which the new source or modification is locating, according to the minimum offset ratios listed below:

<u>Ozone Classification for Area In which New Source or Modification is Locating</u>	<u>Minimum Offset Ratio</u>
Serious nonattainment area	1.2 to 1
Moderate nonattainment area	1.15 to 1
Marginal nonattainment area	1.1 to 1
Nonclassified area (not included in the OTR)	>1 to 1
Marginal or nonclassified area (in the OTR)	1.15 to 1

(d) Offset credits must be obtained from states within the Ozone Transport Region (OTR); if offset credits are obtained from OTR states outside of New England, they must be obtained at a ratio of 2.0 to 1.

ii. For a new source or modification subject to this Part locating in an ozone attainment area, the source from which the offset credits are being obtained is located within another ozone attainment area or within an ozone nonattainment area, either of which are located in a state in the Ozone Transport Region (OTR). Sources locating in an ozone attainment area must obtain VOC offset credits at a ratio of 1.15 to 1. Sources locating in an ozone attainment area that does not have a waiver of NO_x requirements under section 182(f) of the Clean Air Act must obtain NO_x offset credits at a ratio of 2.0 to 1 for offset credits obtained

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outside of New England, and 1.15 to 1 for offset credits obtained within New England.

First, Sec. 123. Sixth, Sec. 71. Eighth, Sec. 32. Seventeenth, Sec. 120. Twentieth, Sec. 38.

§13-603 GENERATION OF OFFSET CREDITS

A. All offset credits must be quantifiable and calculated according to the same method and averaging time for the base case and future case.

1. For offset credits generated within the State of Maine, the base case from which to measure offset credits shall be the actual emissions for any consecutive 24-month period after May 31, 1995. To be creditable as offsets, emissions reductions made in Maine must be made on or after May 31, 1995.

2. To be creditable as offsets, emissions reductions made in states other than Maine must be made on or after November 15, 1990.

B. When quantifying the amount of offset credits generated by reducing actual emissions from existing sources that are exceeding emission limits, only those emission reductions below the licensed, permitted or otherwise allowable emissions for the existing source are creditable as offset credits.

C. In no case shall offset credits be allowed for reduction in emissions that were required by any federally enforceable license condition or other requirements of the Clean Air Act or other applicable federal, state or Town of Jay law, regulation or requirement. If incidental emission reductions not required under the Clean Air Act or other federal, state or Town of Jay law, regulation or requirement meet the applicable requirements of this Part for offset credits, such emissions reductions may be creditable as offset credits.

D. Prior to the new source or modification subject to this Part commencing operation, the credit generator must have made real and permanent reductions in actual emissions as certified by the Board. Where the new source or modification is a replacement for a facility that is being shut down in order to provide the necessary offsets, the Board may allow up to 180 days for shakedown of the new source or modification before the existing facility is required to cease operation.

E. Prior to the new source or modification commencing operation, the credit generator must demonstrate to the Board that the offset credits have been certified by the Board and will provide other documentation and information as requested by the Board.

F. Emission reductions will qualify as offset credits only to the extent that they are in surplus of the following:

1. emission reductions required by then existing or reasonably foreseeable federal laws and requirements for the nonattainment pollutant, including without limitation proposed rules and rules promulgated with future or no established compliance dates, proposed MACT standards, proposed rules or standards, programs included in an attainment demonstration and Control Technology Guidelines;

2. emission reductions of the nonattainment pollutant that are required by then existing or reasonably foreseeable state or Town of Jay laws, regulations or requirements, including without limitation proposed rules, legislation pending before the Maine Legislature, draft amendments to Town of Jay Ordinance, or proposed license or permit limits;
3. emission reductions required by state laws specifically identified in the SIP as being necessary for the State to meet the Clean Air Act requirements;
4. emission reductions already relied on for SIP planning purposes;
5. emission reductions used by, or that will be required for, the source to meet any other federal, state or Town of Jay regulatory requirements.

G. Emission reductions may qualify as offset credits only if they are made federally enforceable through changes in source licenses, permits, SIP revisions, or applicable EPA-approved state regulations that reflect a reduced level of actual or allowable emissions.

H. To qualify as offset credits, emission reductions must be generated by a source that has been licensed, permitted or otherwise allowed to emit and has been actually operating and emitting the pollutant for at least 2 years.

I. To qualify as offset credits, shutdowns or curtailments of plant production resulting in reduced emissions must meet the following conditions:

1. The source must demonstrate to the satisfaction of the Board that demand for the services of products affected by the shutdown or curtailment will not shift to other similar sources in the state that are not required to offset new emissions, such that the expected decrease in emissions would fail to occur; and
2. If the owner or operator of a permitted new source or modification subject to this Part plans to generate and trade offset credits, any shutdown or curtailment will require an amendment to its air emission permit and license.

J. Prior to the use of VOC and NO_x offset credits, the credit generator must demonstrate to the Board that the portion of the credits to be used during the ozone season are generated primarily during the ozone season.

K. Offset credits from shutdowns may be used by the owners of the facility shutting down at a new site within the State, or may be transferred by the owners to another facility. The source using offset credits from shutdowns must demonstrate to the Board, through photochemical grid modeling or another demonstration as approved by the Board, that the use of these offset credits will result in a net air quality benefit in Maine, as compared with emissions prior to the shutdown.

L. NO_x offset credits may be granted for emission reductions made in an area with a NO_x waiver under section 182(f) of the Clean Air Act only upon written notification of approval from the USEPA.

First, Sec. 124. Seventeenth, Sec. 120. Twentieth, Sec. 39.

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§13-604 QUANTIFICATION OF OFFSET CREDITS

A. Offset credits shall be quantified in an average hourly or daily emission rate expressed in pounds.

B. Quantification of offset credits shall follow the two-step process set forth below, including quantification of the base credit and adjustment of the base credit for compliance assurance.

C. **Step One:** Replicable methods must be used to establish the baseline which reflects the lower of actual or allowable emissions and which serves as the level below which emission reductions are considered surplus, and to quantify base credit reflecting the real emission reduction below baseline. Replicable methods must include the following, as appropriate, for the specific offset credit application:

1. Direct measurement of emissions by use of a test method contained in 40 CFR Part 60, Appendices; or

2. Parametric Monitoring programs approved by the Board where the owner of operator identifies one or more indicators of the performance of an applicable control device or process at a pollutant specific emission unit subject to this Part, and for each indicator identified, provides a credible demonstration of the validity of the indicator monitored which includes:

a. The demonstrated relationship between the indicator and emissions from the emissions sepcific unit; and

b. The demonstrated margin of compliance with the applicable emission standard; and

c. The potential variability of emissions under normal and anticipated operating conditions; or

3. Calculation equations which are a function of process and control equipment parameters, mass-balance calculations which are a function of inventory, usage, and disposal records, activity levels and/or throughout production consistent with good engineering practice and methods; or

4. use of EPA-approved emission factors and emission calculation methods; or

5. other methods approved by the Board.

D. **Step Two:** Once the base credit has been established, an adjustment shall be made by applying a compliance assurance multiplier reflecting the method of measurement. Emission reductions will be certified by the Board as offset credits after application of a compliance assurance multiplier. The applicable compliance assurance multiplier will be determined by the Board as provided in the table below.

<u>Method of Measurement</u>	<u>Compliance Assurance Multiplier</u>
Irreversible process change	1.0
Compliance Assessment by Direct	

Determination:

Mass balance reconciliation	0.95
Continuous emission monitoring	0.95

Compliance Assessment by Testing:

Periodic stack test/emission test:	0.85
Testing of capture efficiency and control:	as set by the Board

Emission Determinations using estimates of capture and control, emission factors, and/or all other methods:	0.50-0.80
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E. Once the offset credit has been certified by the Board, the value of the resulting offset credit may be adjusted only to reflect calculation errors prior to use pursuant to this Part.

First, Sec. 125. Seventeenth, Sec. 120. Twentieth, Sec. 40.

PART 7
MISCELLANEOUS AIR POLLUTION CONTROL REQUIREMENTS

Section

- §13-701 Reasonably Available Control Technology (RACT) For Facilities that Emit Nitrogen Oxides (NO_x)
- §13-702 Reasonably Available Control Technology (RACT) for Facilities that Emit Volatile Organic Compounds (VOC)
- §13-703 Volatile Organic Compound (VOC) Emissions from Solvent Degreasers

Seventeenth, Sec. 121.

§13-701 REASONABLY AVAILABLE CONTROL TECHNOLOGIES (RACT) FOR FACILITIES THAT EMIT NITROGEN OXIDES (NO_x)

A. Affected facilities and requirements

Any source that has an existing Jay Air Emission Permit must:

1. submit to the Board a copy of any NO_x RACT application submitted to the Maine Department of Environmental Protection or to the Environmental Protection Agency;
2. submit to the Board a copy of any draft NO_x RACT Order the source receives from the Maine Department of Environmental Protection or the Environmental Protection Agency;

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3. submit to the Board a copy of any final NO_x RACT Order approved by the Maine Department of Environmental Protection; and
4. submit to the Board any other demonstration of implementation of NO_x RACT.

B. Amendment of Permit

The Board may amend any Jay Air Emission Permit to incorporate modifications that implement NO_x RACT as set forth in Maine Department of Environmental Protection Regulations and the Clean Air Act. Permit amendments may include but are not limited to:

1. a comprehensive inventory of all affected NO_x-emitting equipment;
2. emission limits for all affected NO_x-emitting equipment;
3. any schedules requiring compliance with emission limits;
4. procedures for determining initial compliance with emission limits;
5. procedures for assessing compliance with emission limits;
6. record keeping requirements; and
7. reporting requirements.

Eighteenth, Sec. 54 and 55.

§13-702 REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT) FOR FACILITIES THAT EMIT VOLATILE ORGANIC COMPOUNDS (VOC)

A. Affected Facilities and Requirements

Any source that has an existing Jay Air Emission Permit must:

1. submit to the Board a copy of any VOC emission reduction plan and supporting information filed with the Maine Department of Environmental Protection or the Environmental Protection Agency;
2. submit to the Board a copy of any draft VOC RACT draft Order the source receives from the Maine Department of Environmental Protection or the Environmental Protection Agency;
3. submit to the Board a copy of any final VOC RACT Order approved by the Maine Department of Environmental Protection; and
4. submit to the Board any other demonstration of implementation of VOC RACT.

B. Amendment of Permit

The Board may amend any Jay Air Emission Permit to incorporate modifications that implement VOC RACT as set forth in Maine Department of Environmental Protection Regulations and the Clean Air Act. Permit modifications may include, but are not limited to:

1. a comprehensive inventory of all VOC-emitting equipment or processes;
2. emission limits for VOC-emitting equipment;
3. schedule for compliance with emission limits;
4. procedures for determining initial compliance with emission limits;
5. procedures for assessing continuous compliance with emission limits;
6. recordkeeping requirements;
7. reporting requirements.

Eighteenth, Sec. 56.

§13-703 VOLATILE ORGANIC COMPOUND (VOC) EMISSIONS FROM SOLVENT DEGREASERS

A. Affected facilities and requirements

Any source that has an existing Jay Air Emission Permit and that is an owner of a solvent degreaser must, unless otherwise exempt by state or federal law:

1. submit to the Board a copy of any Initial Compliance Certification submitted to the Maine Department of Environmental Protection or to the Environmental Protection Agency;
2. submit to the Board a copy of any Certification records submitted to the Maine Department of Environmental Protection;
3. submit to the Board a copy of all testing and certification of solvent degreaser control devices or systems; and
4. submit to the Board a copy of any reports of control device failure;
5. submit to the Board any other demonstration of compliance with testing, evaluating and limiting VOC emissions from solvent degreasers and with minimum requirements for equipment and operation standards to reduce VOC emissions.

B. Amendment of Permit

The Board may amend any Jay Air Emission Permit to incorporate modifications that implement reductions of VOC from solvent degreasers as set forth in Maine Department of Environmental

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Protection Regulations and the Clean Air Act. These modifications may include, but are not limited to:

1. equipment and operations standards;
2. test methods;
3. methods for handling, storage and disposal of materials containing VOC;
3. compliance certification; and
4. recordkeeping and reporting requirements.

Seventeenth, Sec. 121.

PART 8

ASSURED COMPLIANCE

Section

§13-801 Specific Source Surveillance

§13-802 Assured Compliance

Seventeenth, Sec. 121.

§13-801 SPECIFIC SOURCE SURVEILLANCE

1. Scope and Applicability

- A. This Section shall apply to all Jay Air Emission Permit holders.
- B. The owner or operator of any of the following source categories shall install, calibrate, operate, maintain, and audit CEMS for continuously monitoring the pollutants specified as follows:
 1. Fuel burning equipment with a heat input capacity of greater than 100 million British Thermal units (BTU) per hour shall continuously monitor for opacity, except when:
 - a. Natural gas or liquefied petroleum gas is the only fuel burned, or
 - b. The annual average capacity factor for any non-gaseous fuel or combination of non-gaseous fuels is demonstrated to be less than 30% as required by a federally enforceable permit condition;
 2. Each fossil fuel fired steam generator which has been required to install sulfur dioxide air pollution control apparatus shall continuously monitor for sulfur dioxide;

3. Any fuel burning equipment with a heat input capacity of greater than 200 million BTU per hour shall continuously monitor for nitrogen oxides unless the owner or operator demonstrates that the annual average capacity factor is less than 30% and projected to remain at less than 30% as required by a federally enforceable permit condition;

4. Each fossil fuel fired steam generator which is required to measure sulfur dioxide or nitrogen oxides pursuant to this Section shall continuously monitor for percent oxygen or percent carbon dioxide; and

C. The Board shall require the owner or operator of any stationary source to install, calibrate, operate, maintain, and audit CEMS for continuously monitoring the applicable pollutants if any of the following conditions exist:

1. Any statute, regulation, permit condition or Board action requires the source owner or operator to install a specified CEMS;

2. A source is subject to the New Source Performance Standards (40 CFR Part 60) or National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61) which require the source owner or operator to comply with a specified opacity or emission limit, and to install a specified CEMS;

3. A source owner or operator chooses to limit its potential to emit by accepting federally enforceable permit conditions which restrict its hours of operation or operating configuration, type or amount of material combusted, stored, or processed, or level of production; and a CEMS is determined to be necessary to ensure that these permit conditions are not violated;

4. A source owner or operator uses air pollution control equipment in order to maintain compliance with an opacity or emission limit; and a CEMS is determined by the Board to be necessary to ensure such compliance;

5. The Board determines that a source's emissions have a significant impact on air quality and continuous monitoring of emissions with a CEMS is necessary to ensure that the ambient air quality standards are achieved and maintained.

D. The Board may require the owner or operator of any stationary source to install, calibrate, operate, maintain, and audit a CEMS for continuously monitoring the applicable pollutants if a documented violation occurs of any of the applicable opacity or emission limits found in the Ordinance or in the source's permit;

E. The Board may on a case by case basis allow compliance with this section through alternative emission monitoring and reporting requirements if the Board determines that installation of a CEMS cannot be implemented by a source owner or operator due to physical plant limitations or extreme economic burdens. In such cases the Board shall determine alternative emission monitoring and reporting requirements to satisfy the intent of this Part. Examples of such special cases include, but are not limited to, the following:

1. When installation of a CEMS would not provide accurate determinations of emissions (e.g. condensed, uncombined water vapor may prevent an accurate determination of opacity);

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2. When the annual average capacity factor for the affected facility is less than 30% and is restricted by permit condition to remain at less than 30%;
3. When the Board determines that the requirements would impose an extreme economic burden on the source owner or operator; or
4. When the Board determines that the CEMS cannot be installed due to physical limitations at the facility.

F. Lime kilns equipped with sulfur removal devices approved by the Board shall not be required to continuously monitor for sulfur dioxide.

G. Fuel burning equipment controlled by wet scrubbers approved by the Board shall not be required to continuously monitor for opacity unless such equipment is required by New Source Performance Standards 40 CFR Part 60 to continuously monitor for opacity.

H. Emission monitoring systems, including but not limited to continuous emission monitoring systems, continuous opacity monitoring systems and predictive emissions monitoring systems, must operate and record accurate and reliable data at all times the emissions unit associated with the emission monitoring system is operating with the following exceptions:

1. CEMS-periods not to exceed 10% of the associated unit operating time, when performing Quality Assurance Quality Control (QAQC) procedures on the given emission monitoring system or unavoidable malfunctions of components of the monitoring system unless otherwise specified by the Board.
2. COMS-periods, not to exceed 5% of the associated emission unit operating time, when performing Quality Assurance Quality Control (QAQC) procedures on the given emission monitoring system or unavoidable malfunctions of components of the monitoring systems unless otherwise specified by the Board.

All emission monitoring systems shall meet, at a minimum, the performance specifications, QAQC testing requirements and audit requirements set forth in applicable federal, state, and Jay laws and permit requirements to assure accurate and reliable data collection.

2. Reporting and Quality Control Requirements.

A. All sources required by state or federal requirements or this Ordinance to operate a CEMS shall provide the Board with emission reports for opacity excess emission and gaseous excess omissions on a quarterly basis. These reports shall include but not be limited to the following information:

1. The name of the air contaminant emission standard exceeded;
2. The air contaminant emission standard;
3. The amount of air contaminant emitted in excess of the applicable emission standard expressed in the units of the standard;
4. Date and time of commencement and completion of each time period of excess emission;

5. Specific cause of the excess emission and the corrective action taken;
6. Date and times of each period where the CEMS was not operational, and the total percentage of the source operating time when the CEMS was not operational;
7. Specific cause of each period where the CEMS was not operational, and the corrective action taken;
8. Date and times of each period where the CEMS was out of control and the total percentage of the source's operating time when the CEMS was out of control; and
9. Specific cause of each out-of-control period and the corrective action taken.

B. When no excess emissions have occurred and the CEMS have not been inoperative, repaired, or adjusted, such information shall be provided in a quarterly report.

C. For a CEMS monitoring gaseous emissions of sulfur dioxide, nitrogen oxides, carbon monoxide, oxygen, or carbon dioxide, the quality assurance requirements and procedures described in 40 CFR Part 60, Appendix F, shall apply. At a minimum, all requirements specified in Procedure 1 of Appendix F shall be met and:

1. Each source owner or operator shall develop and maintain a copy of its written quality control procedures, henceforth known as the QC plan, for implementing its quality control program for each CEMS within six (6) months of the initial startup of each CEMS installed unless a different date is approved by the Board. The owner or operator shall keep a complete copy of its QC plan including updates in a readily accessible location for a period of at least six years and shall make these records available to the Board upon verbal or written request;
2. Each source owner or operator shall review the QC plan and all data generated by its implementation at least once each year and shall revise or update the QC plan, as necessary, based on the results of the annual review. The revised QC plan must be available for on-site review by the Board at any time;
3. The Board may request revision of the QC plan at any time based on the results of emission report reviews, inspections, audits, review of the QC plan, or any other information available to the Board.

3. Compliance/Enforcement.

A. CEMS data showing an excess of any applicable emission limit shall be evidence that the source has violated the limit. The permit holder has the burden of demonstrating that CEM data is inaccurate.

B. Failure to provide accurate data for all periods in which the CEMS is required to be operated under this Part shall constitute a violation. Failure to report a CEMS malfunction according to Chapter 3 is conclusive of any violation demonstrated by that CEMS.

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C. The Board may use CEMS data for compliance determinations, enforcement actions, emissions inventory, and associated permitting issues.

4. Compliance Schedule.

A. The owner or operator of a new or modified source subject to this Part shall achieve final compliance with this Part within 60 days of achieving maximum load or within 180 days of initial startup.

B. For all other existing specification monitoring systems previously required by federal regulation, this Ordinance, air emission permit condition or consent agreement, compliance with this Part is effective immediately.

Seventeenth, Sec. 121. Eighteenth, Sec. 57. Twentieth, Sec. 41, 42, 43 and 44.

§13-802 ASSURED COMPLIANCE

1. Scope and Applicability. All Jay Air Emission Permit applicants and permit holders shall comply with this Part.

2. Compliance Certification. All owners and operators subject to this Part shall submit compliance certification in accordance with Chapter 3 that includes the following information:

A. The identification of each term or condition of the permit that is the basis of the certification;

B. A certification of compliance status with all Applicable requirements, state requirements, and Town of Jay requirements by a responsible official, including whether compliance was continuous or intermittent;

C. A statement of methods used for determining compliance currently and over the reporting period according to an Assured Compliance Plan required by this Part;

D. A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the CAA; and

E. Such other facts and information as required under state and federal law or that the Board may require to determine the compliance status of the source.

3. Assured Compliance Plan. All owners and operators subject to this Part shall develop and submit to the Board an Assured Compliance Plan. The Plan shall identify the activities necessary to affirmatively demonstrate that compliance is being achieved with all Permit emission and discharge limitations and standards. The emission monitoring methods described in the Plan shall be sufficiently representative, accurate, precise, reliable, frequent and timely to determine whether a deviation from any applicable emission limitation or standard occurs. Compliance status must be demonstrated on a continuous basis unless the Board determines that a continuous monitoring method cannot be implemented due to physical plant limitations or extreme economic burdens and approves an alternate demonstration. Depending on the type of emission limitation or standard, regulated air pollutant and emissions unit, an Assured Compliance Plan shall incorporate one or more of the following:

- A. Continuous emission monitoring systems;
- B. Continuous process or control device parameter monitoring systems or procedures;
- C. Emission calculations based on accepted engineering estimation techniques;
- D. Maintenance and analysis of records of fuel or raw materials usage;
- E. Periodic verification of emissions, process parameters or control device parameters using portable or situ measurement devices;
- F. Recording results of a program or protocol to conduct specific operation and maintenance procedures, leak detection, fugitive dust control, or other work practices;
- G. Any other form of measuring emissions, process parameters or control device parameters that can achieve the requirements of this Part.
- H. A description of the compliance status of the source with respect to all Town of Jay, State of Maine and Applicable requirements and a certification that compliance can be achieved with all such requirements.

4. Parameter Monitoring in Assured Compliance Plan. If the owner or operator proposes to use the monitoring of process or control device parameters as part of an Assured Compliance Plan, the owner or operator may;

- A. Establish and demonstrate a correlation specification between the monitored parameters and the applicable emission limitations or standards; and
- B. Propose to establish demonstrated compliance parameter levels to act as surrogate measurements of compliance with the applicable emission limitation or standard.

5. Permit Application Requirements. In accordance with this Chapter, the owner or operator shall submit a proposed Assured Compliance Plan in any permit application, amendment application or renewal application that can satisfy the requirements of this Part for every applicable emission limitation or standard at each emissions unit. For a permit amendment, the owner or operator shall submit the portion of the Plan which is applicable to the permit amendment. The application shall contain:

- A. All information, descriptions, explanations, justification, and supporting documentation required by this Part;
- B. A description of all elements, components and procedures of the proposed Assurance Compliance Plan including all proposed performance specifications, equipment, installation and calibration gas specifications, data reduction and calculation procedures, quality assurance procedures, and data availability;
- C. A description of the physical and operational characteristics of the emissions unit that may affect the performance of the Assured Compliance Plan;

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- D. Documentation of monitoring methodologies evaluated for use in an Assured Compliance Plan;
- E. An demonstration of how the proposed Assured Compliance Plan provides for the particular emissions unit sufficiently representative, accurate, precise, reliable, frequent and timely data to determine whether a deviation occurs in order to determine continuous compliance;
- F. A test plan and schedule for conducting performance verification tests or correlation tests;
- G. Any other supporting information; and
- H. The signature of a responsible official.

6. Assured Compliance Reporting. The responsible official of a source subject to this Part shall submit to the board, at least quarterly, a report which summarizes the results of the Assured Compliance Plan that shall include but is not limited to:

- A. Records, data and test results;
- B. Results of quality assurance tests;
- C. Steps taken during instances of monitoring equipment inoperation to assure compliance;
- D. Deviations from emission limitations and standards; and
- E. A certification of compliance with all Permit emission limitation requirements and conditions by a responsible official and as required by this Part.

The Assured Compliance Report may be submitted as part of other required quarterly reporting.

7. Permit Conditions. Each Permit shall contain conditions that require the owner or operator to comply with the requirements of this Part. Such conditions shall include but are not limited to:

- A. Implementation of the Assured Compliance Plan for determining the compliance status of each emissions unit and emission;
- B. The completion of performance verifications tests and correlation tests and submittal of test results to the Board;
- C. Record keeping Requirements that shall include but not be limited to 1) the date, place and time of sampling or measurements; 2) the date(s) analyses were performed; 3) the company or entity that performed the analysis; 4) the analytical techniques or methods used; 5) the results of such analysis; and 6) the operating conditions existing at the time of sampling or measurement;
- D. Submission of Assured Compliance Reports to the Board; and
- E. Provisions for Permit modifications or amendment to include additional components of an Assured Compliance Plan or periodic Board review of Assured Compliance Plan during term of a Permit.

Seventeenth, Sec. 121. Eighteenth, Sec. 58, 59 and 60. Twentieth, Sec. 45.

PART 9

HAZARDOUS AIR POLLUTANTS

Section

§13-901 HAP Emission Limitations

§13-901 HAP EMISSION LIMITATIONS

A. Applicability

1. Promulgated HAP emission limitations

A new or existing HAP source is subject to any HAP emissions limitation promulgated by EPA if one or more of the following conditions occur:

- a. The source meets the criteria for applicability of such HAP emission limitation;
- b. The source has proposed construction of a HAP source; and
- c. The source has proposed reconstruction of a HAP source.

2. Case-by-case HAP determinations

The Board may establish HAP emission limitations on a case-by-case basis, taking into consideration any MACT or GACT emission limitation applicable to a HAP source and any State of Maine HAP requirements.

3. National Emission Standards for Hazardous Air Pollutants for Source Categories

Any owner or operator of processes that produce pulp, paper, or paperboard and that use kraft, soda, sulfite, or semichemical pulping processes using wood shall comply with the provisions of 40 CFR Part 63, subparts S (Pulp and Paper Industry), MM (Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills), JJJJ (Paper and Other Web Coating), and DDDDD (Industrial, Commercial, and Institutional Boilers and Process Heaters), which are incorporated herein by reference.

B. Hazardous Air Pollutants from the Pulp and Paper Industry

1. The provisions of this Sub-Section apply to any owner or operator of processes that produce pulp, paper, or paperboard and that use kraft, soda, sulfite, or semichemical pulping processes using wood or mechanical pulping processes using wood, or any process using secondary or non-wood fibers. Each existing source shall achieve compliance with this Sub-Section no later than

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April 16, 2001 unless a different date is approved by the Board but in any event no later than April 17, 2007. Each new source shall achieve compliance upon start-up. Each owner or operator with affected process equipment shared by more than one type of pulping process shall comply with the requirements of this subsection that achieves the maximum degree of reduction in HAP emissions.

2. Standards for the pulping system at existing sources.

At existing sources, the owner or operator of each pulping system using kraft processes shall control the total HAP emissions from the following equipment systems:

- a. Each low volume high concentration (LVHC) system;
- b. Each knotter system with emissions of 0.05 kilograms or more of total HAP per megagram or ODP (0.1 pounds per ton);
- c. Each screen system with emissions of 0.10 kilograms or more of total HAP per megagram of ODP (0.2 pounds per ton);
- d. Each knotter and screen system with emissions of 0.15 kilograms or more of total HAP per megagram of ODP (0.3 pounds per ton);
- e. Each pulp washing system;
- f. Each decker system that uses any process water other than fresh water or paper machine white water;
- g. Each decker system that uses any process water other than fresh water or paper machine white water or uses any process water with a total HAP concentration greater than 400 parts per million by weight; and
- h. Each oxygen delignification system.

3. Standards for the pulping system at new sources.

At new sources, the owner or operator of each pulping system using kraft processes shall control the total HAP emissions from the following equipment systems:

- a. Each low volume high concentration (LVHC) system;
- b. Each pulp washing system;
- c. Each oxygen delignification system;
- d. Each knotter system;
- e. Each screen system;
- f. Each decker system; and

g. Each weak liquid storage tank.

4. Control device requirements for pulping systems.

Equipment systems listed in paragraphs 2 and 3 above shall be enclosed and vented into a closed-vent system and routed to a control device that must:

- a. reduce total HAP emissions by 98 percent or more by weight;
- b. reduce the total HAP concentration at the outlet of the thermal oxidizer to 20 parts per million or less by volume, corrected to 10 percent oxygen on a dry basis;
- c. reduce total HAP emissions using a thermal oxidizer designed and operated at a minimum temperature of 871 degrees C (1600 degrees F) and a minimum residence time of 0.75 seconds; or
- d. reduce total HAP emissions using a boiler, lime kiln, or recovery furnace by introducing the HAP emission stream with the primary fuel or into the flame zone.

5. Standards for closed-vent systems.

Each enclosure and closed-vent system for capturing and transporting vent streams that contain HAP shall:

- a. maintain negative pressure at each enclosure or hood opening and shall be maintained in the same closed and sealed position as during any performance test except when necessary to use the opening for sampling, inspection, maintenance or repairs;
- b. each component of the closed-vent system that is operated at a positive pressure and located prior to a control device shall be designed for and operated with no detectable leaks as indicated by an instrument reading of less than 500 parts per million by volume above background;
- c. each bypass line in the closed-vent system that could divert vent streams containing HAP to the atmosphere shall either:
 - i. install, calibrate, maintain and operate a flow indicator that provides a record of the presence of gas stream flow in the bypass line at least once every 15 minutes and that is calibrated and maintained according to the manufacturer's specifications; or
 - ii. maintain a car seal or other seal placed on the bypass line valve or closure mechanism in such a way that the valve or closure mechanism cannot be opened without breaking the seal.

6. Periods of excess emissions shall not be a violation provided that the time of excess emissions (excluding periods of startup, shutdown, or malfunction) divided by the total process operating time in a semi-annual reporting period does not exceed the following levels:

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(1) one percent for control devices used to reduce the total HAP emissions from the LVHC system; and

(2) four percent for control devices by April 16, 2006 used to reduce the total HAP emissions from the HVLC system; and

(3) four percent for control devices used to reduce the total HAP emissions from both the LVHC and HVLC systems.

7. Standards for bleaching systems using chlorine or chlorinated compounds.

a. For pulp bleaching systems that use chlorine or any chlorinated compounds, the equipment at each bleaching stage of pulp bleaching systems shall be enclosed and vented into a closed-vent system and routed to a control device to reduce chlorinated HAP emissions (not including chloroform) that:

i. reduces the total chlorinated HAP mass in the vent stream entering the control device by 99 percent or more by weight;

ii. achieves a treatment device outlet concentration of 10 parts per million or less by volume of total chlorinated HAP; or

iii. achieves a treatment device outlet mass emission rate of 0.001 kg of total chlorinated HAP mass per megagram (0.002 pounds per ton) or ODP.

b. For pulp bleaching systems that use any chlorine or chlorinated compounds, the owner or operator shall comply with the following requirements to reduce chloroform air emissions to the atmosphere:

i. comply with the applicable effluent limitation guidelines and standards specified in 40 CFR Part 430; or

ii. use no hypochlorite or chlorine for bleaching in the bleaching system or line.

c. If process modifications are used to achieve compliance with the emission limits specified in 7(a)(ii) and (iii), enclosures and closed-vent systems are not required, unless appropriate.

8. Standards for kraft pulping process condensates.

a. The pulping process condensates of kraft pulping systems from the following equipment systems shall be treated to meet the requirements of this section:

i. each digester system;

ii. each turpentine recovery system;

iii. each evaporator system condensates from: (1) the vapors from each stage where weak liquor is introduced (feed stages); and (2) each evaporator vacuum system for each stage where weak liquor is introduced (feed stages);

- iv. each high volume low concentration (HVLC) collection system; and
 - v. each low volume high concentration (LVHC) collection system;
- b. One of the following combinations of HAP-containing pulping process condensates generated, produced, or associated with the equipment systems listed in paragraph (a) of this section shall be subject to the requirements of this paragraph:
- i. All pulping process condensates from the equipment systems listed in paragraph 8 (a) above;
 - ii. the combined pulping process condensates from each HVLC collection system and each LVHC collection system plus pulping process condensate stream(s) that in total contain at least 65 percent of the total HAP mass from the pulping process condensates from equipment systems in paragraph 8(a)(i) through (iii), above;
 - iii. the pulping process condensates from equipment systems listed in this section that in total contain a total HAP mass of 3.6 kilograms or more of total HAP per megagram (7.2 pounds per ton) of ODP for mills that do not perform bleaching or 5.5 kilograms or more of total HAP per megagram (11.1 pounds per ton) of ODP for mills that perform bleaching.
- c. The pulping process condensates from the equipment systems listed in paragraph 8(a) above, shall be conveyed in a closed collection system. Each pulping process condensate from these equipment systems shall be treated according to one of the following options:
- i. recycle pulping process condensate to an equipment system;
 - ii. discharge the pulping process condensate below the liquid surface of a biological treatment system;
 - iii. treat the pulping process condensates to reduce or destroy the total HAPs by at least 92 percent or more by weight; or
 - iv. at mills that perform bleaching, treat the pulping process condensates to remove 5.1 kilograms or more of total HAP per megagram (10.2 pounds per ton) of ODP, or achieve a total HAP concentration of 330 parts per million or less by weight at the outlet of the control device.

9. Clean condensate alternative.

As an alternative to the requirements specified in this section for the control of HAP emissions from pulping systems using the kraft process, an owner or operator must demonstrate to the satisfaction of the Board that the total HAP emissions reductions achieved by this clean condensate alternative technology are equal to or greater than the total HAP emission reductions that would have been achieved by compliance with the requirements of this section.

10. CMS Monitoring requirements.

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(a) Each owner or operator shall install, calibrate, certify, operate, and maintain according to the manufacturer's specifications, a continuous monitoring system (CMS). The CMS shall include a continuous recorder.

(b) A CMS shall be operated to measure the temperature in the firebox or in the ductwork immediately downstream of the firebox and before any substantial heat exchange occurs for each thermal oxidizer. Owners and operators shall monitor the parameter specified and for the temperature and concentration limits specified. Owners and operators complying with the HAP concentration requirements in Section 4(b) may install a CMS to monitor the thermal oxidizer outlet total HAP or methanol concentration, as an alternative to monitoring thermal oxidizer operating temperature.

(c) A CMS shall be operated to measure the following parameters for each gas scrubber used to comply with the bleaching system requirements:

- (i) the pH or the oxidation/reduction potential of the gas scrubber effluent;
- (ii) the gas scrubber vent gas inlet flow rate; and
- (iii) the gas scrubber liquid influent flow rate.

(d) As an alternative to the requirements of (c), above, a CMS shall be operated to measure the chlorine outlet concentration of each gas scrubber used to comply with the bleaching system outlet concentration requirement.

(e) A CMS shall be operated to measure the following parameters for each stream stripper used to comply with treatment requirements:

- (i) the process wastewater feed rate;
- (ii) the steam feed rate;
- (iii) the process wastewater column feed temperature.

(f) As an option to the requirements of e, above, a CMS shall be operated to measure the methanol outlet concentration to comply with the steam stripper outlet concentration requirement.

11. Biological Treatment System Monitoring

(a) Each owner or operator using a biological treatment system shall perform the following monitoring procedures:

(i) On a daily basis, monitor the following parameters for each biological treatment unit:

- (1) Composite daily sample of outlet soluble BOD₅ concentration to monitor for maximum daily and maximum monthly average;

- (2) Mixed liquor volatile suspended solids;
- (3) Horsepower of aerator unit(s);
- (4) Inlet and outlet liquid flow; and
- (5) Liquid temperature.

(ii) Obtain daily inlet and outlet liquid grab samples from each biological treatment unit to have HAP data available to perform quarterly and compliance percent reduction tests. Perform the following procedures with the liquid samples:

(1) Store the samples for 5 days at 4°C (40°F) to minimize the biodegradation of the organic compounds in the samples. The 5 day storage requirement is required since the soluble BOD₅ test requires 5 days to obtain results. If the results of the soluble BOD₅ test are outside of the range established during the initial performance test, then the archive samples shall be used to perform the percent reduction test specified in 40 CFR 63.457(l).

(2) Perform the percent reduction test procedures specified in 40 CFR 63.457(1) within 45 days after the beginning of each quarter as follows.

(A) The percent reduction test performed in the first quarter (annually) shall be performed for total HAP and the percent reduction obtained from the test shall be at least 92 percent or more by weight.

(B) The remaining quarterly percent reduction tests shall be performed for methanol and the percent reduction obtained from the test shall be at least as great as the methanol reduction determined in the previous first-quarter test specified in paragraph 2(A) above.

(C) The parameter values used to calculate the percent reductions required in paragraphs (2)(A) and (2)(B) above shall be parameter values measured and samples taken in paragraph (a)(i) of this section.

(b) Each pulping process condensate closed collection system shall be visually inspected every 30 days for defects that could result in air emissions to the atmosphere and shall comply with the following inspection and monitoring requirements;

(i) In the case when the collection system is using a closure device for each drain line to control air emissions, the owner or operator shall visually inspect each collection system drain lines to verify that the closure device is in place and there are no defects. Defects include, but are not limited to visible cracks, holes, or gaps in the closure devices/valves; broken, cracked, or otherwise damaged

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seals, gaskets or joints on the drain lines to the collection system and broken or missing plugs, caps, or other closure devices.

(ii) Visually inspect each junction connections to verify that closure devices are in place and there are no defects.

(iii) Visually inspect the unburied portion of each collection line to verify that all closure devices are in place and there are no defects.

(iv) The owner or operator shall maintain a record of the inspection.

(v) In the event that a defect is detected, the owner or operator shall repair the defect as follows:

(1) The owner or operator shall first make efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 15 calendar days after detection except as provided in (2) below.

(2) Repair of a defect may be delayed beyond 15 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the collection system and no alternative is available at the facility site to accept the condensate or wastewater normally managed in the individual collection system or influent line. In this case, the owner or operator shall complete repairs by the end of the next time the process unit that is generating the condensate or wastewater managed in the individual collection system or influent line shuts down.

(3) The owner or operator shall maintain a record of the defect repair.

(c) To establish or reestablish, the values for each operating parameter required to be monitored under paragraph (a) each owner or operator shall use the following procedures:

(i) During the initial performance test required in (e) below or any subsequent performance test, continually record the operating parameter;

(ii) Determinations shall be based on the control performance and parameter data monitored during the performance test, supplemented if necessary by engineering assessments; and

(iii) Provide the rationale for the selected operating parameter value and monitoring frequency and averaging time. Include all data calculations used to develop the value and a description of why the value, monitoring frequency and averaging time demonstrate continuous compliance with the applicable emission standard.

(d) Each owner or operator of a biological treatment system shall perform all the following requirements when monitoring parameters specified in paragraphs (a)(i)(1)

through (a)(i)(3) are below minimum operating parameter values or above maximum operating parameter values established in paragraph (c) above.

(i) The following shall occur and be recorded as soon as practical:

(1) Determine compliance with the 92 percent or more by weight using the percent reduction test procedures specified in 40 CFR 63.457(l) and the monitoring data specified in paragraph (a)(i) above that coincide with the time period of the parameter excursion;

(2) Steps shall be taken to repair or adjust the operation of the process to end the parameter excursion period; and

(3) Steps shall be taken to minimize total HAP emissions to the atmosphere during the parameter excursion period.

(e) An initial performance test is required. Sample and test locations in accordance with 40 CFR Part 63.457(c), 40 CFR Part 63.457(g), 40 CFR Part 63.457(j), 40 CFR 63.457(l) and 40 CFR Part 63.457(n).

Seventeenth, Sec. 122. Twentieth, Sec. 47. Twenty-First, Sec. 29. Twenty-Second, Sec. 57 and 58.

FLOODPLAIN MANAGEMENT ORDINANCE

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60.3 (d) Rev. 6/00

ARTICLE I - PURPOSE AND ESTABLISHMENT

Certain areas of the Town of Jay, 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 Jay, 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 Jay, 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 Jay 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 and 4401-4407.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Jay 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 Jay, Maine.

The areas of special flood hazard, Zones A and AE, are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study - Town of Jay, Maine, Franklin County," dated November 15, 1989 with accompanying "Flood Insurance Rate Map" dated November 15, 1989, which are hereby adopted by reference and declared to be a part of this Ordinance.

ARTICLE II - PERMIT REQUIRED

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

ARTICLE III - APPLICATION FOR PERMIT

The application for a Flood Hazard Development Permit shall be submitted to the Planning Board 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 in Zone A only, of the:

1. base flood at the proposed site of all new or substantially improved structures, which is determined:

a. in Zone AE, from data contained in the "Flood Insurance Study - Town of Jay, Maine," as described in Article I; or,

b. in Zone A:

(1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to Article VI.K. and VIII.D.;

(2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,

(3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.

2. highest and lowest grades at the site adjacent to the walls of the proposed building;
 3. lowest floor, including basement; and whether or not such structures contain a basement; and,
 4. level, in the case of non-residential structures only, to which the structure will be floodproofed;
- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
- J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate;
- K. The following certifications as required in Article VI by a registered professional engineer or architect:
1. a Floodproofing Certificate (FEMA Form 81-65, 08/99, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI;
 2. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
 3. a certified statement that bridges will meet the standards of Article VI.M.;
 4. a certified statement that containment walls will meet the standards of Article VI.N.;
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE

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

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

ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS

The Planning Board 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 Study - Town of Jay, Maine," as described in Article I;

2. in special flood hazard areas where base flood elevation data are not provided, the Planning Board shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.; Article VI.K.; and Article VIII.D., in order to administer Article VI of this Ordinance; and,
 3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b., the community shall submit that data to the Maine Floodplain Management Program 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 a second Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction , "as built", for verifying compliance with the elevation requirements of Article VI, paragraphs F, G, or H. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
 2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.a.,b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
 3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.
- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article IX of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles III, VI, and VII of this Ordinance.

ARTICLE VI - DEVELOPMENT STANDARDS

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

A. All Development - All development shall:

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

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

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

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

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

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

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

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

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

and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

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

a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.

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

1. Zone AE shall:

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

b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,

c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:

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

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

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

2. Zone A shall:

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

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

I. Recreational Vehicles - Recreational Vehicles located within:

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

J. Accessory Structures - Accessory Structures, as defined in Article XIII, located within Zones AE and 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.L.2., in at least two different walls of the accessory structure;
4. be located outside the floodway;
5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. Floodways -

1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. In Zones AE and A riverine areas for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
 - b. is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," *Flood Insurance Study - Guidelines and Specifications for*

Study Contractors, (FEMA 37/ January 1995, as amended).

3. In Zones AE and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

L. Enclosed Areas Below the Lowest Floor - New construction or substantial improvement of any structure in Zones AE and 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.

M. Bridges - New construction or substantial improvement of any bridge in Zones AE and 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; and
2. a registered professional engineer shall certify that:
 - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.K.; and
 - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and

water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

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

1. Zones AE and A shall:

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

O. Wharves, Piers and Docks - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones AE and 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 Jay may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

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

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

1. other criteria of Article IX and Article VI.K. are met; and,
2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:

1. the development meets the criteria of Article IX, paragraphs A. through D. above; and,
2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

F. Any applicant who meets the criteria of Article IX, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:

1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
2. such construction below the base flood level increases risks to life and property; and,
3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

G. Appeal Procedure for Administrative and Variance Appeals

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

ARTICLE X - ENFORCEMENT AND PENALTIES

A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.

B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.

C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, 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 Study cited in Article I of this Ordinance.

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

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

Building - see **Structure**.

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

Code Enforcement Officer - any person or board responsible for performing the inspection, licensing, and enforcement duties required by a particular statute or ordinance.

Development - means any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.

Elevated Building - means a non-basement building

- a. built, in the case of a building in Zones AE or 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 Zones AE or 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.L..

Elevation Certificate - An official form (FEMA Form 81-31, 07/00, as amended) that:

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

Flood or Flooding - means:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

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

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

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

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

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

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

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

Floodway - see **Regulatory Floodway**.

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

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

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

Historic Structure - means any structure that is:

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

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

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

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

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

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

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

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

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

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

Recreational Vehicle - means a vehicle which is:

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

Regulatory Floodway -

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

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

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

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

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

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

Substantial Improvement - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before

the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

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

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

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

ARTICLE XIV - ABROGATION

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

60.3 (d)

Jay, Maine

Town Ordinances

Home

TOWN OF JAY PROPERTY
ASSESSED CLEAN ENERGY (PACE)
ORDINANCE

A TRUE COPY ATTEST CERTIFIED BY:

Ronda L. Palmer, Town Clerk

ENACTED: June 12, 2012

Attest: A true copy of a proposed ordinance entitled: "Town of Jay Property Assessed Clean Energy (PACE) Ordinance" as certified to me by the municipal officers of Jay on the 12th day of March, 2012

Ronda Palmer
Municipal Clerk
Jay, ME

**TOWN OF JAY PROPERTY ASSESSED CLEAN ENERGY (PACE)
ORDINANCE**

Administration by the Efficiency Maine Trust

PROPERTY ASSESSED CLEAN ENERGY (PACE) ORDINANCE.

PREAMBLE

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

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

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

NOW THEREFORE, the Municipality hereby enacts the following Ordinance:

ARTICLE I - PURPOSE AND ENABLING LEGISLATION

1. Purpose

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

2. Enabling Legislation

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

ARTICLE II - TITLE AND DEFINITIONS

1. Title

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

2. Definitions

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

1. Energy saving improvement. “Energy saving improvement” means an improvement to qualifying property that is new and permanently affixed to qualifying property and that:

A. Will result in increased energy efficiency and substantially reduced energy use and:

(1) Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy Energy Star program or similar energy efficiency standards established or approved by the Trust; or

(2) Involves air sealing, insulating, and other energy efficiency improvements of residential, commercial or industrial property in a manner approved by the Trust; or

B. Involves a renewable energy installation or an electric thermal storage system that meets or exceeds standards established or approved by the trust.

2. Municipality. “Municipality” shall mean the Town of Jay.

3. PACE agreement. “Pace agreement” means an agreement between the owner of qualifying property and the Trust that authorizes the creation of a PACE mortgage on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement, other than mortgage holders.

4. PACE assessment. “PACE assessment” means an assessment made against qualifying property to repay a PACE loan.

5. PACE district. “Pace district” means the area within which the Municipality establishes a PACE program hereunder, which is all that area within the Municipality’s boundaries.

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

ARTICLE III - PACE PROGRAM

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

ARTICLE IV – CONFORMITY WITH THE REQUIREMENTS OF THE TRUST

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

ARTICLE V – PROGRAM ADMINISTRATION; MUNICIPAL LIABILITY

1. Program Administration

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

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

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

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

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

2. Liability of Municipal Officials; Liability of Municipality

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

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

TOWN OF JAY, MAINE

RECYCLING AND WASTE DISPOSAL

ORDINANCE

A TRUE COPY ATTEST CERTIFIED BY:

Ronda L. Palmer, Town Clerk

Adopted June 14, 2011

Amended June 12, 2018

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Section 1: TITLE, PURPOSES AND POLICIES

This Ordinance shall be known and may be cited as the “Town of Jay, Maine - Recycling and Waste Disposal Ordinance” herein after this “Ordinance”. The Town of Jay has enacted this Ordinance for the purpose of protecting the public health, safety and welfare of the inhabitants of the Town and for protecting and enhancing the Town’s environment. This Ordinance is intended to provide for a comprehensive, rational and effective means of regulating the collection, processing, transportation and disposal of solid waste in the Town by establishing rules governing the separation of Recyclable Materials from Waste and the Disposal of Waste generated within the Town. This Ordinance further provides for the establishment and enforcement of rules and regulations, establishing limitations, prohibiting certain acts causing solid waste disposal problems and providing for fines and or suspension of Facility privileges for violation of the provisions of this Ordinance. This Ordinance shall be liberally construed to effectuate its purposes and policies.

Section 2: AUTHORITY AND APPLICATION

This Ordinance is enacted pursuant to Article VIII Part Second of the Constitution of the State of Maine and the Laws of the State of Maine, including, without limitation: 30-A M.R.S.A. Section 3001 and 38 M.R.S.A. Sections 1304-B and 1305. This Ordinance applies to all Persons Disposing and generating Waste within the Town or using the Facility.

Section 3: SEVERABILITY

A. If any provision or section of this Ordinance, or the application thereof to any Person or circumstance, is held void or invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect in whole or in part without the invalid provision or application, and to this end each provision of this Ordinance is declared to be severable and independent. It is the intent of the Town that each and every part, clause, paragraph, section and subsection of this Ordinance be given effect to the degree possible.

B. In any case where a provision of this Ordinance is found to be in conflict with a provision of any other Ordinance or code of the Town the provision which established or establishes the higher standard for the promotion and protection of health and welfare for the community shall prevail.

Section 4: EFFECTIVE DATE

This Ordinance shall be effective upon its enactment at the Town Meeting and as may be amended from time to time.

Section 5: REPEALER

The Jay Recycling and Waste Disposal Ordinance enacted November 22, 1993 as amended April 29, 2002 is hereby repealed and replaced by this Ordinance. This Ordinance also supersedes and replaces all ordinances, regulations, policies, decisions and/or actions regarding solid waste previously enacted by the Town which are in conflict with it and will remain in effect until

revoked or replaced by action of the voters of the Town.

Section 6: DEFINITIONS

Subject to additional definitions contained in the subsequent Parts of this Ordinance and unless the context otherwise requires, in this Ordinance the following terms have the following meanings.

Acceptable Liquid Waste. “Acceptable Liquid Waste” means the collective reference to Liquid Wastes that are Specially Approved Waste and Reclaimable Liquid Waste.

Acceptable Solid Waste. “Acceptable Solid Waste” means all damaged Recyclable Materials, ordinary household, municipal, and commercial Waste, consisting primarily of garbage, trash, rubbish, refuse that is disposed of by or collected from residential, and commercial establishments within the Town per Section 13 and 14. Acceptable Solid Waste excludes the following items: Recyclable Materials, Other Solid Waste, Specially Approved Waste, Reclaimable Materials, Unacceptable Solid Waste and Liquid Waste.

Authorized Hauler. “Authorized Hauler” means a Person who has a contract with the Town of Jay to transport Processible Solid Waste and Acceptable Liquid Waste to the Facility for Persons generating such waste within the Town of Jay.

Authorized Municipality. “Authorized Municipality” means a municipality which has an existing contract with the Town for the Disposal of Processible Solid Waste and Acceptable Liquid Waste.

Authorized Resident. “Authorized Resident” means a Person who resides in the Town or conducts business in the Town and who has obtained a permit/sticker from the Town or is an Authorized Resident of an Authorized Municipality to deliver Processible Solid Waste and Acceptable Liquid Waste to the Facility.

Disposal. “Disposal” means the discharge, deposit, injection, incineration, dumping, spilling, leaking or placing of any Waste into or on any land, air or water.

Facility. “Facility” means the transfer station and recycling facility constructed and managed by the Town of Jay located on State Route 4 in Jay.

Liquid Waste. “Liquid Waste” means any waste that is determined to contain free liquids according to the Paint Filter Liquids Test (Method 9095 of E.P.A. SW-846, 3rd Edition). Liquid Waste is the collective reference to Acceptable Liquid Waste and Unacceptable Liquid Waste.

Other Solid Wastes. “Other Solid Wastes” is the collective reference to Brown Goods, Ash, Mattress, Box Springs, construction/demolition debris, Hot Loads, Burnable Debris, Vegetative Waste and Wood Waste.

Person. “Person” means an individual, corporation, partnership, consortium, joint venture association, commercial entity, trust, firm, municipality, county, state, federal or other governmental unit, or any combination thereof and the agents of same.

Processible Solid Waste. “Processible Solid Waste” means the collective reference to Acceptable Solid Waste, Reclaimable Material, Recyclable Material, Other Solid Waste and Specially Approved Waste.

Reclaimable Liquid Waste. “Reclaimable Liquid Wastes” are Acceptable Liquid Wastes that may be reclaimed such as Lead Acid Batteries and Waste Oil.

Reclaimable Materials. “Reclaimable Materials” are Solid Waste materials that may be reclaimed such as White Goods; Tires; and Metal Goods.

Recyclable Materials. “Recyclable Materials” are materials that can be reused either in the same form or as part of a different product and are as defined by the Town.

Solid Waste. “Solid Waste” means useless, unwanted or discarded solid material with insufficient liquid content to be free flowing and is the collective reference to Processible Solid Waste and Unacceptable Solid Waste.

Specially Approved Wastes. “Specially Approved Wastes” are wastes that are Unacceptable Solid Waste and Unacceptable Liquid Waste that may be collected at the Facility by the Town from time to time as designated by the Jay Board of Selectpersons. Specially Approved Waste materials include, but are not limited to: Liquid and non-liquid paint, household woodstove ash and antifreeze.

Town. “Town” is the Town of Jay Board of Selectpersons, Town Manager or their designees, including the Code Enforcement Officer and the Public Works Director.

Unacceptable Liquid Wastes. “Unacceptable Liquid Wastes” is the collective reference to hazardous waste and Special Waste that have sufficient liquid content to be free flowing, Sludge, and other Liquid Waste designated as Unacceptable Liquid Waste by the Jay Board of Selectmen.

Unacceptable Solid Wastes. “Unacceptable Solid Wastes” are materials not considered Acceptable Solid Waste, Recyclable Materials, Reclaimable Materials, Other Solid Wastes or Specially Approved Wastes. Unacceptable Solid Wastes include but are not limited to:

1. Junked or abandoned vehicles;
2. Snowmobiles or all-terrain vehicles, boats and campers;
3. Dead animals or portion thereof, other pathological— type solid waste;
4. Dredge Spoils;
5. Stumps;
6. Hazardous wastes and Special Wastes with insufficient liquid content to be free flowing; and not specially approved;
7. Biomedical Waste;
8. Sludge;
9. Pathological Waste;
10. Special Waste;
11. Burn Barrel Debris;
12. Empty containers that contained regulated pesticides or herbicides;
13. Containers that have chemical residue inside
14. Ash (other than woodstove ash); and
15. Any other Solid Waste designated Unacceptable by the Jay Board of Selectpersons or by the disposal facility to which Jay will be sending its Processible Solid Waste or Acceptable Liquid Waste;

Waste. “Waste” means all discarded materials or substances rejected as being spent, useless, worthless, unwanted or in excess to the owners at the time of such discard or rejection. Waste is the collective reference to Solid Waste and Liquid Waste.

Section 7: PROHIBITION

No Person shall Dispose of Waste in the Town except in accordance with this Ordinance. Waste not generated in the Town shall not be Disposed of in the Town. In particular, but not limited to, Disposing of Waste by burning, burying, dumping on roadsides or other Disposal not in conformance with this Ordinance shall be a violation of this Ordinance and the violator may be prosecuted under Section 23 of this Ordinance.

Section 8: ANTI-SCAVENGING

No Person shall remove, add to, tamper with or take possession of Acceptable Solid Waste or Recyclable Materials placed or set out for collection or located at the Facility without prior approval from the Town. No Person shall remove, add to, tamper with or take possession of any Processible Solid Waste or Acceptable Liquid Waste located at the Facility without prior approval from the Town.

Section 9: EXCEPTIONS

A. The Town may Dispose of Processible Solid Waste and Acceptable Liquid Waste in accordance with the laws of the State of Maine.

B. Any Person who has a license or permit to Dispose of Waste from any agency of the State of Maine including but not limited to Maine Department of Environmental Protection, and is in compliance with its license and permit may Dispose of Waste in the Town in accordance with such license or permit.

C. If the Disposal method is a Best Management Practice, then any Person who is engaged in an agricultural activity in the Town may Dispose of agricultural waste in the Town. "Best Management Practice" shall mean those management practices which are determined by the Maine Commissioner of Agricultural, Food and Rural Resources to be Best Management Practices.

D. Any Person who has a contract with the Town or has a permit from the Town may Dispose of Processible Solid Waste or Acceptable Liquid Waste in the Town provided that such person complies with the provisions of this Ordinance and their contract or permit.

E. Any Person may Dispose of inert fill in the Town provided that such Disposal is in accordance with all State and Federal laws, rules and regulations.

Section 10: SOLID WASTE BAGS AND RECYCLING CONTAINERS

All Acceptable Solid Waste bags shall be of sufficient thickness to contain the maximum allowed weight. All Acceptable Solid Waste bags set out for curbside pickup shall be no more than 33 gallons or more than 50 pounds of weight. Acceptable Solid Waste bags may be placed in containers so long as the containers are not metal. Bags that are not of sufficient thickness, or exceeding 50 pounds will not be picked up or accepted at the Facility. The Select Board, at its discretion, may re-institute clear and transparent bag requirements, as it deems necessary.

All Persons participating in the collection program shall place Recyclable Materials in a recycling container. The amount of Recyclable Materials placed in one container shall not exceed 50 pounds. Recyclable Materials which do not fit within the recycling containers may be set out for curbside collection provided that such Material is broken down, secured and bundled together so as not to exceed 50 pounds.

Section 11: WASTE SEGREGATION AND ARRANGEMENT

The Town shall maintain an outline of the items that are acceptable at the Facility, any segregation and preparation requirements as well as any other information pertinent to the processing of Solid Waste materials. As market conditions warrant or as the Town deems necessary, the Town may, from time to time, require further segregation of Solid Waste, add to or eliminate certain items of Waste as acceptable and may require further processing of Solid Waste prior to their acceptance.

The Town shall designate areas to discard of certain types of waste. These areas shall be clearly marked with appropriate signage. All Solid Waste shall be disposed of only in such manner and at such areas and locations as designated.

Unacceptable Liquid Waste, Unacceptable Solid Waste and items of Reclaimable Materials, Other Solid Waste and Reclaimable Liquid Waste which are not accepted by the Facility, shall be disposed of in accordance with the laws of the United States of America and the State of Maine and the rules and regulations of the United State Environmental Protection Agency and Maine Department of Environmental Protection Agency. No Unacceptable Liquid Waste, Unacceptable Solid Waste or items of Reclaimable Materials, Other Solid Waste and Reclaimable Liquid Waste which are not accepted by the Facility shall be disposed of within the Town unless such waste is designated Specially Approved Waste by the Town. No hazardous waste shall be delivered to the Facility. No industrial or commercial waste which creates a problem of disposal by virtue of federal, state or local statutes, rules, regulations, etc. controlling or prohibiting its disposal shall be delivered to the Facility.

Section 12: RECYCLING SEGREGATION

Recyclable Materials are materials that can be reused either in the same form or as part of a different product. Recyclable Materials may include but are not limited to: glass, newsprint, corrugated cardboard and brown paper bags, plastics, mixed paper, magazines, metal/aluminum food cans and high grade paper. The Town shall maintain an outline of the items that must be recycled, any segregation and preparation requirements as well as any other information pertinent to the processing of Recyclable Materials. As market conditions warrant or as the Town deems necessary, the Town may, from time to time, require further segregation of Recyclable Materials, add to or eliminate certain items of Waste as Recyclable Materials and may require further processing of Recyclable Materials prior to their acceptance.

Section 13: COLLECTION

Municipal curbside collection of Waste shall not be provided to the following:

- (1) Apartment buildings or complexes of residential buildings, which contain more than five dwelling units per parcel.
- (2) Hotels, motels, bed and breakfast facilities, restaurants, warehouses;
- (3) Markets, bakeries, grocery stores;
- (4) Manufacturing or industrial facilities;
- (5) Regional School Units; and
- (6) Medical facilities.

Each Person shall place their Acceptable Solid Waste bags containing Acceptable Solid Waste and their recycling containers containing Recyclable Materials at curbside for collection, in

accordance with the route schedule established and published by the Town. Bags shall be placed at curbside no earlier than 4:00 P.M. on the day prior to the scheduled pick up but must be set out by 5:00 A.M. the morning of collection. All containers and any material not picked up shall be removed from the curbside by 7:00 A.M. following the day of collection.

Recyclable materials shall be placed at the curb separate from Solid Waste. All items shall be segregated and prepared as directed by the Town. Items not segregated and prepared as directed will be left at the curb. No bulky waste, construction debris or demolition debris, ash, yard or garden refuse, leaves or brush, motor oil, antifreeze, paint or other toxic liquids shall be placed curbside.

Persons using curbside collection services will be responsible for the trash and recyclables from their bags that are strewn because of overweight bags, overstuffed bags, animals, Mother Nature, wind or snowplows. All residents must ensure that solid waste stored on their premises does not create a nuisance. It shall be the duty of the owner of every residential property to provide and keep within the building or upon the lot where the building is situated suitable and sufficient containers to receive the accumulation of solid waste on the premises during the interval between collections.

Any Person of the Town of Jay or Authorized Municipalities or Persons who are otherwise designated or permitted by the Town may deliver their Acceptable Solid Waste, Recyclable Materials, items of Reclaimable Materials, Other Solid Waste, Reclaimable Liquid Waste and Specially Approved Waste that the Facility is accepting, to the Facility at times specified by the Town. Authorized Residents shall not deliver Waste to the Facility which has not been generated within the Town. Persons of the Town of Jay or Authorized Municipalities or Persons who are otherwise designated or permitted by the Town shall pay the fee for such disposal that is charged by the Town and deposit the items at the location designated by the Town.

Section 14: THE FACILITY

The Facility shall be for the use of Persons of the Town of Jay or Authorized Municipalities or Persons who are otherwise designated or permitted by the Town and shall be used in compliance with this Ordinance. The Town may accept Recyclable Materials, Processible Solid Waste and Acceptable Liquid Waste from any other source, including without limitation, other municipalities or Persons.

The Facility shall not be for use by the following:

- (1) Apartment buildings or complexes of residential buildings, which contain more than five dwelling units per parcel.
- (2) Hotels, motels, bed and breakfast facilities, restaurants, warehouses;
- (3) Markets, bakeries, grocery stores;
- (4) Manufacturing or industrial facilities;
- (5) Regional School Units; and
- (6) Medical facilities.

Only wastes generated within the boundaries of the Town or Authorized Municipalities or Persons shall be accepted at the Facility. It is illegal to dispose of or deliver Wastes originating outside the Town or Authorized Municipalities or Persons to the Facility.

Section 15: FEES

For any Person of the Town there shall be no Fee for the disposal of Acceptable Solid Waste or

Recyclable Materials appropriately segregated and delivered to the Facility or set out for curbside collection. The Town may establish, from time to time, a Town of Jay Recycling and Waste Disposal Fee Schedule for the disposal of an item of Other Solid Waste, Reclaimable Material or Specially Approved Waste. The Fee shall be reasonable and in establishing a Fee the Town shall consider all costs, including, without limitation, administrative costs, of handling and storing, the item; and all costs of transportation and ultimate disposal of the item. The Town may increase or decrease the fee or eliminate or add items, as it deems necessary and appropriate and in the best interest of the Town.

The Town of Jay Recycling and Waste Disposal Fee Schedule shall be available and posted at the Facility. All fees shall be payable to the Town of Jay and shall be due to the Town before depositing any of the listed items at the Facility.

Authorized Municipalities and Authorized Residents and Authorized Haulers of Authorized Municipalities shall pay fees for Disposal of Processible Solid Waste and Acceptable Liquid Waste as established in their Contract with the Town even if Jay Authorized Residents are not required to pay any fee for the Disposal of a particular item of Waste.

Section 16: AUTHORIZATIONS

The Town shall take such steps as it deems necessary to insure the appropriate Disposal of all Processible Solid Waste and Acceptable Solid Waste, the operation and maintenance of the Facility and to enforce this Ordinance. The Jay Board of Selectmen may designate the Town Manager to assist them in carrying out their responsibilities and duties and obligations under this Ordinance. The Town may contract with private companies to carry out the provisions of this Ordinance. The Town may contract with other Persons for Processible Solid Waste and Acceptable Liquid Waste from any other source, including without limitation, other municipalities.

Section 17: INSPECTION AND REJECTION

Any Acceptable Solid Waste or Recyclable Materials set out for collection or any Processible Solid Waste and Acceptable Liquid Waste brought to the Facility may be inspected to insure compliance with this Ordinance. The Town shall have the authority to open or ask to be opened any bag or container which does not reasonably reveal the contents therein and to reject for non-compliance with this Ordinance, any Waste set out for collection or Waste brought to the Facility. If any Liquid Waste, Unacceptable Solid Waste, Other Solid Waste, Specially Approved Waste or Reclaimable Material is mixed with the Acceptable Solid Waste or Waste is mixed with the Recyclable Materials, the Waste may be rejected and if set out for collection it may not be picked up. Upon such rejection, the Person whose Waste has been rejected shall separate their Waste in accordance with this Ordinance and either deliver the Processible Solid Waste or Acceptable Liquid Waste to the Facility or set it out for collection.

The Town shall also have the authority to stop and inspect the load of any vehicle which has entered the Facility and inquire of any Person entering the Facility as to the origin and composition of the materials. Any Person who refuses to allow for the inspection of the materials contained in the vehicle, or who refuses to answer questions pertinent to determining whether this Ordinance or related regulations have been violated, may be refused access to the Facility and shall not be allowed to dispose of material.

Section 18: STICKER PERMITS

The Facility shall be for the use of Persons of the Town as specified herein. As a means of user control, the Town shall distribute vehicle permits to Town of Jay residents which shall be affixed to user vehicle(s) by or in the presence of the facility attendant at the time of issuance. The name, address, proof of residency and the registration number of the vehicle to which the permit will be attached shall be required to obtain a permit. Failure to exhibit such a permit will result in denial of use of the Facility.

A new sticker must be obtained whenever a sticker in use becomes defaced, lost, or whenever the user's motor vehicle is sold or a new vehicle is purchased. Stickers may not be placed on other vehicles, transferred or sold. In the event of the change of ownership or transfer of the vehicle, the permit sticker shall be removed. Any permit sticker found to have been obtained by fraudulent means will be revoked and the Person so obtaining or attempting to obtain a sticker shall be prosecuted as provided in this Ordinance. Any Person found to be depositing Waste at the Facility, which originates outside of the Town, or violating any other provision of this Ordinance shall be subject to the penalties of this Ordinance.

Section 19: NON-STICKER PERMITS

Persons who are otherwise designated or permitted by the Town shall not receive sticker permits from the Town of Jay but shall have limited use of the Facility as agreed upon by the Town. Contractors and non-residential property owners shall not receive sticker permits from the Town but are eligible for temporary passes as outlined below.

Section 20: TEMPORARY PASSES

The Facility is available to contractors doing work on properties in the Town of Jay, such as renovating a building, etc. Contractors will be required to have the Jay resident or property owner secure a temporary pass from the Town authorizing use of the Facility for the period they anticipate they will be working on the project. Non-residential property owners shall also secure a temporary pass from the Town authorizing use of the Facility for the period they anticipate they will be working on a project. Generally, passes will be for a seven (7) day period. Commercial haulers, who are not contracted by the Town, are not entitled to use the Facility and are not eligible for a temporary pass.

Applications for a temporary pass shall include: the name, address and phone number of the Town of Jay resident, business, or non-resident property owner for whom the work is being done; the name, address, and phone number of the hauler transporting materials to the Facility; the vehicle registration number; the type of material to be carried to the Facility; the date(s) when the material is to be deposited at the Facility; the signatures of the applicant and a signed certification stating that the materials originated in the Town and authorizing inspection and investigation of the materials and the origin of the materials with the understanding that violations will be penalized in accordance with Section 23 including removal cost and legal fees.

The temporary pass must be presented at the Facility each trip until completion of the work. On

completion of the work, the pass shall be turned into the Town. Any temporary pass found to have been obtained by fraudulent means will be revoked and the person so-obtaining or attempting to obtain a temporary pass shall be prosecuted as provided by this Ordinance. Any person found to be depositing Waste at the Facility, which originates outside the Town or violating any other provision of this Ordinance shall be subject to the penalties of this Ordinance.

Section 21: RULES AND REGULATIONS

The Town may adopt such rules and regulations as it deems necessary for: Disposal of Processible Solid Waste and Recyclable Materials; contracts with Authorized Haulers and Authorized Municipalities; the operation and maintenance of the Facility; and any other matter that the Town deems necessary for the carrying out of this Ordinance.

The Town shall determine which items of Processible Solid Waste and Acceptable Liquid Waste will be accepted at the Facility. The Town from time to time may add or eliminate items of Processible Solid Waste or Acceptable Liquid Waste that the Town will or will not allow to be disposed of at the Facility.

The Town may issue Facility bulletins to notify all users of: (a) the current rules and regulations of the Facility; (b) the items of Processible Solid Waste and Acceptable Liquid Waste that are being accepted at the Facility; (c) any fee for disposal of any particular item; (d) the ultimate destination of Acceptable Solid Waste and the appropriate definition of Acceptable Solid Waste that is being used; and (e) any other matter that the Town deems necessary for the proper operation of the Facility.

Any violation of the rules and regulations, Program List or and Facility bulletins, shall be deemed a violation of this Ordinance.

Section 22: TITLE AND USE OF WASTE

All Acceptable Solid Waste and Recyclable Materials once segregated to be disposed of shall become the property of the Town. All Processible Waste and Acceptable Liquid Waste that is accepted at the Facility shall become, upon acceptance, the property of the Town. The Town may sell, donate, Dispose of or otherwise deal with the Processible Solid Waste or Acceptable Liquid Waste. Reclaimable Materials, Other Solid Waste, Reclaimable Liquid Waste or Specially Approved Waste, wherever located, shall not be or become the property of the Town except as provided in this Ordinance. Unacceptable Solid Waste and Unacceptable Liquid Waste shall not be or become the property of the Town.

Section 23: PENALTIES AND ENFORCEMENT

It is the responsibility of each Person to provide proper disposal of all Waste generated on their premises in accordance with the requirements of this Ordinance. This responsibility includes the separation of Waste, delivery of Waste to the Facility or curbside pickup as outlined herein, proper home storage of Waste and proper methods of home disposal.

The Jay Board of Selectpersons or its designees, including the Town Manager, Code Enforcement Officer and the Public Works Director, may enforce the provisions of this Ordinance and shall review any alleged violation of this Ordinance and take appropriate action as required. The Board or its designees may institute necessary legal or equitable proceedings in the name of the Town to enforce the provisions of the Ordinance.

Any Person violating any provision of this Ordinance shall be considered to have committed a civil violation and shall be subject to penalties as set forth in 30-A M.R.S.A. §4452. Prohibited acts, and enforcement for any unlawful actions shall also be controlled by laws in 17 M.R.S.A. §2261- 2276, "Litter Control".

Fines shall be recovered on complaint made by the Town. Each act of violation and each day upon which any such violation continues shall constitute a separate offense. The Town shall be entitled to recover its attorney's fees and costs, including clean up costs, in any action in which the court finds that a violation has occurred. In addition to these penalties, the Town may seek injunctive relief to prevent the continuation or recurrence of a violation. All civil penalties shall be paid to the Town.

The Town may suspend curbside collection and deny entry and use of the Facility to any person found in violation of this Ordinance for up to 30 days for a first violation and up to 60 days for a second violation and any specified period of time for any subsequent violations. The Town shall notify such Persons of potential suspension or denial and shall hold a hearing prior to taking action on the suspension or denial.

TOWN OF JAY, MAINE

TOWN WAY ORDINANCE

A TRUE COPY ATTEST CERTIFIED BY:

Ronda L. Palmer, Town Clerk

Adopted April 27, 2009

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**CHAPTER I
GENERAL PROVISIONS**

Part

- 1. Title, Purpose, Authority, Repealer, Separability, Conflicts, Time, Notice, Waivers and Appeals**
- 2. General Definitions**

PART 1

TITLE, PURPOSE, AUTHORITY, REPEALER, SEPARABILITY, CONFLICTS, TIME, NOTICE, WAIVERS AND APPEALS

Section

- § 1-101 Title**
- § 1-102 Statement of Purpose**
- § 1-103 Authority, Administration and Effective Date**
- § 1-104 Repealer**
- § 1-105 Separability**
- § 1-106 Conflicts With Other Laws**
- § 1-107 Computation and Enlargement of Time**
- § 1-108 Notice**
- § 1-109 Waivers**
- § 1-110 Appeals**

§ 1-101 TITLE

This Ordinance shall be known and cited as the “Town of Jay, Maine, Town Way Ordinance”.

§ 1-102 STATEMENT OF PURPOSE

The purpose of this Ordinance is to promote the health, safety, and public welfare of the residents of the Town of Jay through the establishment of minimum construction standards for Proposed Town Ways. This Ordinance shall aid the Planning Board in its review and permitting of Proposed Town Ways and the Board of Selectmen in making recommendations to Town Meeting for the acceptance of a Proposed Town Way as a Town Way.

§ 1-103 AUTHORITY, ADMINISTRATION AND EFFECTIVE DATE

- A. Authority: This Ordinance is enacted pursuant to and consistent with Article VIII-A of the State of Maine Constitution and Title 30-A, M.R.S.A. Section 3001; Title 23 M.R.S.A. Section 3021; and Title 23 M.R.S.A. Section 3022.
- B. Administration: This Ordinance shall be administered by the Planning Board of the Town of Jay, Maine, hereinafter referred to as the “Board”.

- C. Effective Date: This Ordinance shall be effective upon enactment by the annual town meeting or a special town meeting of the Town of Jay.

§ 1-104 REPEALER

- A. Adoption of this Ordinance shall repeal and replace any previously adopted road construction and acceptance standards including the “Road Ordinance of the Town of Jay, Maine” adopted on June 22, 1992.
- B. Adoption of this Ordinance shall repeal and replace any previously adopted setback requirements including the Town of Jay Set Back Ordinance adopted March 13, 1965 and amended October 21, 1968 and September 25, 1979 and the Warrant Article 22 adopted by the Town Meeting in March of 1983.

§ 1-105 SEPARABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

§ 1-106 CONFLICTS WITH OTHER LAWS

Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or any other ordinance, regulation or statute, the provision imposing the greater restriction shall control.

§ 1-107 COMPUTATION AND ENLARGEMENT OF TIME

In computing any period of time provided by this Ordinance, the day of the act, event or default after which the designated period of time begins to run is not to be included. To illustrate: if a public vote is taken by the Planning Board or the Board of Selectmen, commencement of any reconsideration or appeals period begins the following day. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

When, by this Ordinance or by order of the Planning Board, an act is required to be done at or within a specified time, the Planning Board may within its discretion at any time order the period enlarged for a reasonable period for good cause shown.

§ 1-108 NOTICE

Notification of any decision by the Planning Board or Board of Selectmen is completed by the public vote on such decision. Any Person who has applied for either a permit or a waiver is

notified of the Planning Board's decision when the Planning Board votes on the issue. In addition, any Person who seeks a waiver or appeal under Chapter I § 1-109 and § 1-110 is notified of any final decision when the Planning Board or Board of Selectmen vote.

The Code Enforcement Officer will also provide a copy of the Planning Board's or Board of Selectmen's written decision to the Person in a practicable manner, including but not limited to: in-person notification and U.S. mail. This written notice does not replace public notification via public vote.

§ 1-109 WAIVERS

- A. Granting of Waiver: Where the Board makes written findings of fact that there are special circumstances of a Proposed Town Way that might make it impossible for an Applicant to strictly comply with this Ordinance, the Board may waive any portion of this Ordinance in order to permit a Proposed Town Way, provided that the public health, safety, and welfare are protected, and provided that the waiver does not have the general effect of nullifying the intent and purpose of this Ordinance. In granting waivers, the Board shall require such conditions be consistent with the objectives of this Ordinance.
- B. Appeal of Waiver: Any Person aggrieved by a decision of the Planning Board with respect to the issuance of a waiver may seek review to the Board of Selectmen within 30 days following the date of the public vote taken by the Planning Board. The Board of Selectmen shall, within 30 days of receipt of the request for review, commence its review of the Planning Board's waiver decision and within 60 days vote on the appeal. The Board of Selectmen's decision on the review of the waiver shall constitute its final decision.
- C. Judicial Review of Waiver: Any Person aggrieved by a final decision of the Board of Selectmen may seek judicial review by the Maine Superior Court in accordance with state law within 30 days following the date of the public vote taken by the Board of Selectmen.

§ 1-110 APPEALS

- A. Appeal of Permit: Any Person aggrieved by a decision of the Planning Board with respect to the issuance of a Town of Jay Proposed Town Way Permit may seek reconsideration thereof by the Planning Board. The Person may seek reconsideration within 30 days following the date of the public vote taken by the Planning Board. Within 30 days of receipt of the request for reconsideration, the Planning Board shall reconsider its decision and within 60 days vote on the reconsideration. The Planning Board's decision on the reconsideration shall constitute its final decision.
- B. Judicial Review of Permit: Any Person aggrieved by a final decision of the Planning Board may seek judicial review by the Maine Superior Court in accordance with state law within 30 days following the date of the public vote taken by the Planning Board. Any person must first seek reconsideration by the Planning Board before appealing to the Superior Court.

PART 2
GENERAL DEFINITIONS

Section

§ 1-201 General Definitions

Subject to additional definitions contained in this Ordinance, which are applicable to specific parts or parts thereof, and unless the context otherwise requires, in this Ordinance the following terms have the following meanings. Terms not defined shall have their customary dictionary meaning.

- A. **Abutter:** Any Person who owns property contiguous to the Proposed Town Way.
- B. **Acceptance:** An affirmative vote taken at the Town Meeting of the Town of Jay, Maine, to accept the Proposed Town Way as a Town Way, and assuming maintenance and repair responsibility for the Town Way.
- C. **Applicant:** Any Person applying for a permit, certification, approval, or similar form of permission, or a modification, repeal or renewal thereof, from the Board.
- D. **Commencement of Construction:** Initiation of physical onsite construction activities that are of a permanent nature; such activities include, but are not limited to, installation of utilities, clearing, or grading efforts.
- E. **Filing Fee:** A nonrefundable fee of \$100.00 made payable by check to the Town of Jay submitted with an application for a Proposed Town Way.
- F. **MDOT:** Maine Department of Transportation.
- G. **Official Submittal Date:** As defined in Chapter II, § 2-204(E), the date which the Board determines an application for a Proposed Town Way is complete.
- H. **Permit:** Any permit, certificate, approval or similar form of permission required or authorized by this Ordinance.
- I. **Person:** An individual, corporation, partnership, limited liability corporation, limited liability limited partnership, limited liability partnership, limited partnership, consortium, joint venture association, commercial entity, trust, firm, municipality, county, state, federal or other governmental entity, or a combination thereof, and the agents of the same.
- J. **Private Road:** A road that is not intended to be accepted as a Town Way, and shall not be replaced, maintained or repaired by the Town of Jay.
- K. **Proposed Industrial or Commercial Town Way:** A Proposed Town Way servicing industrial

or commercial uses.

- L. Proposed Town Way: Any piece of land that is intended to be offered to the Town of Jay for acceptance as a Town Way.
- M. Roadway: The portion of the Town Way improved, designed or ordinarily used for vehicular traffic, exclusive of sidewalks, drainage ways, berms or shoulders.
- N. Structure: Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences and signs. The term includes structures temporarily or permanently located, such as decks and satellite dishes.
- O. Subdivision: As defined in the Town of Jay Environmental Control and Improvement Ordinance, Chapter 5 – Subdivisions.
- P. Town Way: Publicly owned ways such as roads, streets, avenues, highways and other rights-of-ways that have been accepted by the Town of Jay for passage and use of the general public by motor vehicle, inclusive of sidewalks, drainage ways, berms and shoulders and are maintained by the Town of Jay.

**CHAPTER II
APPLICABILITY AND APPLICATION PROCEDURES**

Part

- 1. Applicability**
- 2. Application Details, Requirements, Fees, Board Action and Review**

**PART 1
APPLICABILITY**

Section

§ 2-101 Applicability

- A. This Ordinance applies to all Persons conducting activities in the Town of Jay which are regulated by this Ordinance. The Town of Jay shall be exempt from the provisions of this Ordinance.
- B. Higher Design and Construction Standard: Nothing in this Ordinance shall be construed to prevent the design and construction of Proposed Town Ways which meet higher standards, use improved methods or higher quality materials.
- C. Private Roads: This Ordinance shall not apply to the construction, alteration or improvement of Private Roads within the Town of Jay. Private Roads being proposed within a Subdivision shall meet the requirements set forth in the Jay Environmental Control and Improvement Ordinance, Chapter 5 – Subdivisions. The following words shall appear on any recorded plan containing a Private Road:

“All roads shall remain private, to be maintained by the developer or the lot owners and shall not be accepted or maintained by the Town of Jay until they meet the provisions of the Town Way Ordinance and are accepted by an affirmative vote at a Town meeting.”
- D. Already Constructed Roads: This Ordinance shall apply to those Private Roads already constructed that are now being proposed by the Applicant for Acceptance by the Town of Jay, provided that they meet the provisions of this Ordinance.

**PART 2
APPLICATION DETAILS, REQUIREMENTS, FEES, BOARD ACTION AND REVIEW**

Section

- § 2-201 Application Details**
- § 2-202 Application Requirements**
- § 2-203 Fee Requirements**
- § 2-204 Board Action Upon Submission**
- § 2-205 Application Review**

§ 2-201 APPLICATION DETAILS

The Applicant shall complete the application, provided by the Town of Jay, with the following information:

- A. Project name and the name(s), address and phone number of the Applicant(s);
- B. The name(s), address and phone number of the owner(s) of record of the land upon which the Proposed Town Way is to be located (if other than Applicant);
- C. The name, address and phone number of Applicant's authorized representative (if other than Applicant);
- D. Address to which all correspondence from the Board should be sent;
- E. Applicant's Right, Title, and Interest in the parcel of land upon which the Proposed Town Way is to be located and a copy of the instrument creating the Applicant's interest;
- F. A statement of any legal encumbrances of the land upon which the Proposed Town Way is to be located;
- G. The tax map(s) and lot number(s) upon which the Proposed Town Way is to be located;
- H. The anticipated starting and completion dates of each major phase of construction;
- I. Estimated costs of construction and improvements; and
- J. Other information as may be required by the Board.
- K. For previously built Private Roads that the Applicant now wishes to submit as a Proposed Town Way for Acceptance by the Town of Jay, or for roads previously proposed and rejected, the Application Details will be substantially the same as required for new Proposed Town Ways as determined applicable by the Board.

§ 2-202 APPLICATION REQUIREMENTS

The plans and illustrations submitted as part of the application shall be prepared by a Maine Registered Land Surveyor or Maine Professional Engineer and shall include the following information:

- A. The scale of the plan (all plans and profile drawings shall be drawn to a scale 1" = 40' horizontal and 1" = 4' vertical);
- B. The direction of magnetic north;

- C. A plan profile and typical cross section views of all Proposed Town Ways (cross section views shall be taken at 50 foot intervals);
- D. The starting and ending point of the Proposed Town Way with relation to established Town Ways and any planned or anticipated future extensions of the proposed Town Ways (all terminal points and the center line alignment shall be identified by survey stationing);
- E. The Proposed Town Way limits Design Standards, as defined in, Chapter III § 3-101, with relation to existing buildings and established landmarks within 30 horizontal feet of the proposed centerline of the Proposed Town Way;
- F. Dimensions, both lineal and angular, necessary for locating boundaries and necessary for locating subdivisions, lots and easements;
- G. The names and addresses of all owners of abutting property to the Proposed Town Way;
- H. All natural waterways, watercourses and wetlands that may affect the Proposed Town Way;
- I. The kind, size, location, profile, and cross-section of all existing and proposed drainage ways and structures and their relationship to existing natural waterways as they may affect the Proposed Town Way;
- J. A soil erosion and sedimentation control plan showing interim and final control provisions;
- K. Curve data for all horizontal and vertical curves shall be the center line radius, arc length, beginning of curve, and end of curve points;
- L. All center line gradients shall be shown and expressed as a percent;
- M. All curve and property line radii of intersections;
- N. The limits and location of any proposed sidewalks and curbing;
- O. The location and size of all existing and proposed overhead and underground utilities to include, but not limited to, the following: (when a location is approximate, it shall be noted on the plan as such)
 - 1. Water supply lines and valves;
 - 2. Sanitary sewer lines and manholes;
 - 3. Storm sewer lines, manholes and catch basins;
 - 4. Telephone line poles or underground vaults;
 - 5. Electrical power line poles or underground vaults;
 - 6. Fire hydrants; and
 - 7. Street lights.

- P. The proposed name(s) of each Proposed Town Way (the Board of Selectmen have all authority in assigning Town Way names in accordance with the Town of Jay Addressing Ordinance);
- Q. The location of each existing or proposed driveway connecting with the Proposed Town Way(s);
- R. Lines or dots in the center line of the Proposed Town Way at intervals of 50 feet beginning at the intersection with the existing Town Way, unless otherwise directed by the Town of Jay 911 Addressing Officer;
- S. Suitable space on the approved plan to record a Title Block containing the date and conditions of approval, if any. This space shall be substantially similar to the following:

Approved Date: _____

NOTICE

This approval is limited to the requirements of the Town of Jay, Maine, Town Way Ordinance and the Town of Jay Proposed Town Way Permit attached herewith. Proposed Town Ways shown on the plan may only be accepted by a vote of the Town of Jay. This approval does not constitute evidence of any acceptance by the Town of any Proposed Town Way or easement shown on this plan. This approval does not indicate compliance with any other federal, state statutes or local ordinances.

The above Title Block and Notice shall appear on all plans submitted for review and formal approval by the Board.

- T. One copy of the plan(s) reduced to a size of 8 ½ by 11 inches.
- U. For previously built Private Roads that the Applicant now wishes to submit as a Proposed Town Way for Acceptance by the Town of Jay, or for roads previously proposed and rejected, the Application Requirements shall be substantially the same as required for new Proposed Town Ways as determined applicable by the Board.

§ 2-203 FEE REQUIREMENTS

The following Filing Fees and Review Fees shall be assessed against all Applicants:

- A. Filing Fee: All applications shall be accompanied by a nonrefundable Filing Fee of \$100 payable by check to the Town of Jay. Failure to pay the required fee at the time of filing will result in the application being returned to the Applicant.

- B. **Review Fee:** The Applicant shall pay all direct costs specifically related to the application and permit, including, legal, engineering, environmental consulting, survey, inspection, architectural, land use planning, other professional fees, preparation of information and materials for the Board, mailing, publishing, copying and other costs specifically related to the application and permit, collectively referred to as “Review Costs”. All applications shall be accompanied by a Review Fee of 2% of the estimated costs of construction and improvements, which shall be deposited into the hereby established ROAD REVIEW ACCOUNT. The Review Fee shall be used by the Board to satisfy Review Costs.

If the initial amount of the Review Fee is drawn down by 90%, the Applicant shall deposit an additional 1% of the estimated costs of construction and improvement. The Board or its inspecting official may suspend activity regarding the application, permit and construction until any additional Review Fee has been paid. If an additional Review Fee is not paid after notice, the Board may deny an application, or if applicable, revoke an issued permit. Final payment of the Review Fee shall occur before Board of Selectmen consideration of a warrant article to accept a Proposed Town Way as a Town Way.

Upon action taken at a Town Meeting on a warrant article to accept a Proposed Town Way as a Town Way, and payment of any outstanding obligations, any remaining Review Fee in the ROAD REVIEW ACCOUNT shall be refunded to the Applicant within 60 days.

- C. **Fee Administration:** The Code Enforcement Officer shall be responsible for fee administration and shall review bills, submitted for the direct cost related to the application and permit as outlined above, prior to payment from the ROAD REVIEW ACCOUNT.
- D. The Board of Selectmen shall be the trustees of the ROAD REVIEW ACCOUNT and the ROAD REVIEW ACCOUNT, unless otherwise provided in this Ordinance, shall be subject to 30-A M.R.S.A. § 5802, as amended from time to time.

§ 2-204 BOARD ACTION UPON SUBMISSION

- A. The completed application form, required fees, required plans and related information shall be submitted to the Code Enforcement Officer no less than fourteen (14) days prior to a Planning Board meeting.
- B. Upon receiving a Proposed Town Way application, the Code Enforcement Officer shall issue the Applicant a dated receipt and shall notify all Abutters via regular postal mail of the Proposed Town Way specifying the location of the Proposed Town Way, a general description of the project, and that abutters have five (5) days to request a public hearing.
- C. Within sixty (60) days after receipt of an application, the Board shall notify the Applicant in writing either that the application is complete or, if it is incomplete, the specific additional information needed to make a complete application.
- D. The Board may schedule an on-site inspection of the Proposed Town Way if it determines such inspection beneficial to its review of the application.

- E. When the Board has determined that an application is complete, it shall issue the Applicant a receipt stating the Official Submittal Date.
- F. After the Official Submittal Date, the Board shall begin its consideration and evaluation of the application and shall determine whether it will hold a public hearing.
- G. If the Board decides to hold a public hearing, the hearing shall be held within 45 days of the Official Submittal Date. The Board shall cause notice of the date, time and place of the hearing to be given to the Applicant and all abutting property owners via regular postal mail and to be published in a newspaper of general circulation in Jay. The date of publication shall be at least seven (7) days prior to the hearing.

§ 2-205 APPLICATION REVIEW

- A. Within 30 days of a public hearing, or if no hearing is held, within sixty (60) days after the Official Submittal Date, or within such other time as has been mutually agreed to by the Board and the Applicant, the Board shall approve, deny or approve with conditions the application as it may deem advisable to satisfy this Ordinance and to preserve the public health, safety and general welfare.
- B. In all instances, the burden of proof shall be upon the Applicant.
- C. The Board shall issue its decision in writing, stating the Board's findings of fact establishing that the application does or does not meet the provisions of this Ordinance and shall state its conclusions of law, including a plain statement of the appropriate rights for reconsideration.
- D. Where an application for the construction of a Proposed Town Way is approved by the Board, a Permit shall be issued. The issuance of a Permit does not constitute, nor is evidence of, any Acceptance by the Town of the Proposed Town Way. Rather, a Permit allows for the Commencement of Construction of the Proposed Town Way. When the Proposed Town Way has been built according to the Design, Construction, and Additional Standards as described in Chapter III § 3-101, § 3-201 and § 3-301, and it has been inspected and received a Certification of Construction as described in Chapter III § 3-501, any Person may petition the Town for Acceptance of the Proposed Town Way. Final Acceptance of a Proposed Town Way shall be by an affirmative vote at a Town Meeting.
- E. Where an application of an already constructed Proposed Town Way is approved by the Board, a Permit is not issued. Instead, any Person may petition the Town for Acceptance of the Proposed Town Way under Chapter IV § 4-101. In order to be accepted, the already constructed Proposed Town Way must meet the requirements and review standards of the Design, Construction, and Additional Standards as described in Chapter III § 3-101, § 3-201 and § 3-301; and have been inspected and received a Certification of Construction as described in Chapter III § 3-501. Final acceptance of a Proposed Town Way shall be by an affirmative vote at a Town Meeting.

**CHAPTER III
STANDARDS, INSPECTION AND CERTIFICATION**

Part

- 1. Design Standards**
- 2. Construction Standards**
- 3. Additional Standards**
- 4. Inspection**
- 5. Certification of Construction**

**PART 1
DESIGN STANDARDS**

Section

§ 3-101 Design Standards

- A. These Design Standards shall be met by all Proposed Town Ways and shall control the Roadway, shoulders, curbs, sidewalks, drainage systems, culverts and other appurtenances.
- B. The character, extent, width and grade of all Proposed Town Ways shall be considered in their relation to existing Town Ways and other Proposed Town Ways.
- C. The following Design Standards apply:

Description	Proposed Town Way
Minimum Proposed Town Way width	60 feet
Minimum pavement width/Roadway width	22 feet
Sidewalk width (where proposed or required)	5 feet
Minimum grade	.5 percent
Maximum grade	10 percent
Minimum centerline radius	150 feet
Minimum tangent between curves of reverse alignment	100 feet
Roadway crown	1/4"/foot
Minimum angle of intersections	90 degrees
Maximum grade within 75 feet of intersection	3 percent
Minimum curb radii at intersections	15 feet
Minimum Proposed Town Way radii at intersections	10 feet

Minimum width of shoulders (each side) 3 feet

D. The centerline of the Roadway for all Proposed Town Ways shall be the centerline of the Proposed Town Way.

E. Dead End Streets: In addition to the design standards above, dead-end Proposed Town Ways shall be constructed to provide a cul-de-sac turn-around or a hammerhead turn-around as identified in Appendix A and B. The area to be paved within the turn-around shall be determined by the Board on a case-by-case basis based on the design submittal and specific characteristics of the property. The Board may require the reservation of a 30-foot easement in line with the Proposed Town Way to provide continuation of pedestrian traffic or utilities to the next Town Way. The Board may also require the reservation of a 60-foot easement in line with the Proposed Town Way to provide continuation of the Proposed Town Way where future subdivision is possible. No driveways shall be allowed off from a cul-de-sac or hammer-head turn-around. Dead end streets are to be discouraged.

F. Grades, Intersections and Site Distances

1. Grades of all Proposed Town Ways shall conform in general to the terrain so that cut and fill are minimized while maintaining the grade standards above.
2. All changes in grade shall be connected by vertical curves to provide for the minimum site distances below.
3. Where new intersections are proposed, site distances, as measured along existing Town Ways onto which traffic will be turning, shall be based upon the existing speed limit and shall conform to the table below. Where new driveway curb cuts are proposed on new Proposed Town Ways, site distances, as measured along existing Town Ways onto which traffic will be turning, shall be based upon the anticipated speed limit and shall conform to the table below. Sight distances shall be measured from the driver’s seat of a vehicle standing on that portion of the exit with the front of the vehicle a minimum of 10 feet behind the curb line or edge of shoulder, with the height of the eye 3 ½ feet, to the top of an object 4 ½ feet above the pavement.

Existing Speed Limit (MPH)	25	30	35	40	45	50	55
Sight Distance (feet)	200	250	305	360	425	495	570

Where necessary, corner lots shall be cleared of all growth and site obstructions including ground excavation to achieve the required visibility.

Where new driveway curb-cuts are proposed on any State or State Aid road, a Driveway Entrance Permit is required by the Maine Department of Transportation.

New driveway curb-cuts onto new Proposed Town Ways, and onto new Town Ways

that have been accepted under this Ordinance, shall be built only in the location identified on the approved Plan unless an alternate location, which meets the sight requirements above, is approved by the Road Commissioner. Deed restrictions shall be included to this effect.

New driveway curb-cuts must have established easements allowing for public cutting, clearing and drainage systems, where determined necessary by the Town.

4. Cross (four-cornered) intersections shall be avoided insofar as possible. A minimum distance of 125 feet shall be maintained between the centerlines of Proposed Town Ways which enter an existing Town Way or Proposed Town Way.
- G. Sidewalks: Where proposed or required, sidewalks shall be Bituminous and shall meet the following minimum requirements:
1. The gravel aggregate sub-base course shall be no less than 12 inches thick.
 2. The crushed aggregate base course shall be no less than 2 inches thick.
 3. The hot bituminous pavement surface course shall be no less than 2 inches thick after compaction.
 4. All curbing material shall be granite.

PART 2
CONSTRUCTION STANDARDS

Section
§ 3-201 Construction Standards

- A. Minimum thickness of material after compaction:

Description	Proposed Town Way	Proposed Industrial or Commercial Town Way
Sub-base Gravel	18"	24"
Surface Gravel	6"	8"
Hot Bituminous Pavement		
Total Thickness	3 1/2"	6"
Surface Course	1 1/2"	2"
Base Course	2"	4"

B. Preparation

1. Before any clearing commences within the Proposed Town Way, the centerline and side lines shall be staked or flagged at 50-foot intervals.
2. Before grading is started, the entire Proposed Town Way width necessary for the Roadway, shoulders, sidewalks, drainage ways and utilities shall be cleared of all stumps, roots, brush and other objectionable material. All shallow ledge, large boulders and tree stumps protruding above the natural profile of the land shall be removed from the Roadway, shoulders, sidewalks and drainage ways.
3. All organic materials shall be removed to a depth of 2 feet below the subgrade of the Proposed Town Way. Rocks exceeding 12 inches in any dimension shall also be removed to a depth of 2 feet below the subgrade of the Proposed Town Way. On soils which have been identified as not suitable for Roadways, the subsoil shall be removed from the Proposed Town Way site to a depth of two feet below the subgrade and shall be replaced with material meeting the specifications for gravel aggregate sub-base below and an MDOT approved stabilization geotextile.
4. Except in a ledge cut, or the crossing of a stream or wetland, side slopes shall be no steeper than a slope of 3 feet horizontal to 1 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 steeper than 4 feet vertical to 1 foot horizontal shall be permitted.
5. All underground utilities shall be installed prior to paving to avoid cuts in the pavement. Building sewers and water service connections shall be installed to the edge of the Proposed Town Way prior to paving.

C. Bases and Pavement

1. Sub-base Gravel: The Aggregate Sub-base Gravel shall be gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The aggregate shall conform to MDOT Standard Specifications for Highways and Bridges Type D, or the latest MDOT Specification for Aggregate Sub-base Gravel. Aggregate for the sub-base shall contain no particles of rock exceeding 6 inches in any dimension.
2. Surface Gravel: The Aggregate Surface Gravel shall be gravel of hard durable particles free from vegetative matter, lumps, or balls of clay and other deleterious substances. The aggregate shall conform to MDOT Standard Specifications for Highways and Bridges Type B, or the latest MDOT Specification for Aggregate Surface Gravel. Aggregate for the Surface Gravel shall contain no particles of rock exceeding 3 inches in any dimension.

- 3. Pavement Joints: Where pavement joins an existing pavement, the existing pavement shall be cut along a smooth line and form a neat, even, vertical joint.
- 4. Pavements: Pavement shall be Hot Mix Asphalt as specified in the latest revisions of the MDOT Standard Specifications for Highways and Bridges. All mixes shall be laid out in accordance with the latest MDOT mix application specifications.
- 5. Curbs and Gutters:
 - a. Proposed Town Way curbs and gutters shall be installed as required by the Board.
 - b. Curbs shall be vertical except when sloped curbs are specifically allowed by the Board.

PART 3
ADDITIONAL STANDARDS

Section
§ 3-301 Additional Standards

- A. The Applicant shall secure and comply with all other applicable federal, state, and Jay licenses, permits, authorizations, conditions, agreements and orders prior to or during construction, as appropriate.
- B. Erosion Control: The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction and clean-up stages.
- C. Cleanup: Following construction of the Proposed Town Way, the Applicant shall conduct a thorough clean-up of stumps and other debris from the entire Proposed Town Way. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the Plan and be suitably covered with fill and topsoil, limed, fertilized and seeded.
- D. Signs and Lighting: All signage and/or pavement marking, if applicable, shall be properly installed by the Applicant. Street lighting shall be installed by the Applicant as directed by the Board of Selectmen prior to Board of Selectmen consideration of a warrant article to accept a Proposed Town Way as a Town Way.
- E. Drainage: The Applicant shall submit evidence demonstrating that the drainage system has sufficient capacity to handle the storm events specified below (minimum diameter of culverts is 15 inches).

<u>Roadway Cross-Culvert</u>	<u>Driveway Culvert</u>	<u>Closed System</u>	<u>Open Channel</u>
50-year	50-year	10-year/ 5-minute duration	50-year

Where necessary, the Applicant shall employ the use of stormwater detention systems to maintain natural or existing stormwater runoff rates. Calculations and designs shall be performed by professionals experienced in hydrology and storm water management.

Drainage ditches shall be provided so as to effectively control water entering and leaving the Roadway. Such drainage ditches shall be properly stabilized so that the potential for unreasonable erosion does not exist. The lining of drainage ditches will be based on the maximum gradient of the channel or ditch. The following will apply:

<u>Slope</u>	<u>Treatment</u>
1.0-2.0%	Seed and mulch the ditch or channel
2.0-4.0%	Use an erosion control blanket and seed
4.0-6.0%	Use sod
6.0%	Use plain riprap or stone ditch protection

In order to prevent surface drainage from directly entering a stream, river, wetland or water body, Proposed Town Ways and their associated drainage ditches shall be located, constructed and maintained so as to provide an unscarified filter strip, of at least the width indicated below, between the exposed mineral soil of the Proposed Town Way and the normal high water mark of a surface water body:

Average Slope of Land Between Exposed Mineral Soil and Normal High Water (Percent)	Width of Strip Between Exposed Mineral Mineral Soil and Normal High Water Mark (ft. along surface of the ground)
0%	25 ft.
10%	45 ft.
20%	65 ft.
30%	85 ft.
40%	105 ft.
50%	125 ft.
60%	145 ft.
70%	165 ft.

PART 4
INSPECTION

Section
§ 3-401 Inspection

- A. Inspecting Official: The Board shall designate, in its Permit for construction of a Proposed Town Way, an inspecting official, whose duty it shall be to assure that all municipal specifications, requirements and conditions of approval are met during the construction and shall assure the satisfactory completion of improvements required by this Ordinance.

- B. **Notification of Construction:** At least ten (10) days prior to commencing the construction, alteration or improvement of a Proposed Town Way, the Applicant shall notify the Road Commissioner in writing of the time when the Applicant proposes to commence construction so that the Road Commissioner can arrange for inspection to be made. All inspection costs incurred by the municipality shall be the responsibility of the Applicant. The Board shall utilize the ROAD REVIEW ACCOUNT provided for in Chapter II § 2-203(B) to cover all inspection costs.
- C. **Noncompliance With Plan:** Upon finding that the improvements have not been constructed in accordance with the approved plans and specifications, the inspector shall so report in writing to the Road Commissioner and the Applicant. The Road Commissioner shall notify the Applicant of the steps necessary to come into compliance with the approved plans and specifications. Failure to comply with these steps shall lead to revocation of the permit.
- D. **Modification During Construction:** If at any time it appears necessary or desirable to modify the required improvements during construction, 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 modification approval in writing and shall transmit a copy of the approval to the Road Commissioner. Revised plans shall be filed with the Board for the record. For major modifications, such as relocation of Proposed Town Ways, changes in grade by more than 1%, etc. the Applicant shall submit to the Board a request for Permit amendment for review and approval.

PART 5

CERTIFICATION OF CONSTRUCTION

Section

§ 3-501 Certification of Construction

Upon completion of construction, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the Board, by the Applicant, certifying to the Town of Jay that the Proposed Town Way meets or exceeds the Design, Construction and Additional Standards of this Ordinance. The certification shall be accompanied by the “As Built” plans for the Proposed Town Way.

CHAPTER IV
ACCEPTANCE, EXPIRATION OF PERMIT AND TOWN WAY OPENINGS

Part

- 1. Acceptance Requirements**
- 2. Expiration of Permit**
- 3. Town Way Openings**

PART 1
ACCEPTANCE REQUIREMENTS

Section

§ 4-101 Acceptance Requirements

- A. Any Person may petition the Board of Selectmen for Acceptance of any Proposed Town Way which meets the Design, Construction and Additional Standards contained herein. Prior to petitioning the Town for acceptance of a Proposed Town Way, an application shall have been submitted in accordance with Chapter II § 2-201, § 2-202 and § 2-203.
- B. Each petition for Acceptance shall include the Certification of Construction and As Built drawings as specified in Chapter III § 3-501 unless previously submitted to the Town.
- C. Proposed Town Ways that do not meet the provisions of this Ordinance may not be considered for Acceptance.
- D. Petitioning for Acceptance means that an article to accept any Proposed Town Way, meeting the design standards, may be included in the warrant for a regular or special town meeting, to be voted upon by the voters.
- E. A petition for Acceptance must be accompanied by delivery to the Town of Jay a commitment for title insurance demonstrating that: (1) the Proposed Town Way is free and clear of encumbrances, or such encumbrances as the Board of Selectmen shall waive; (2) title for the entire width and length of the Proposed Town Way is ensured, and (3) for any easements for drainage and slopes as may be applicable, title shall be conveyed to the Town by warranty deed.
- F. Final Acceptance occurs when the majority of voters at the Town Meeting vote to accept the Proposed Town Way.
- G. Following acceptance of a Proposed Town Way, the Town of Jay shall cause to be recorded, at the Franklin County Registry of Deeds, all necessary deeds providing clear title to the Town of Jay.

PART 2
EXPIRATION OF PERMIT

Section
§ 4-201 Expiration of Permit

Following the issuance of a Permit, if Commencement of Construction is not made within one year of the date of the Permit, the Permit shall lapse and become void.

PART 3
TOWN WAY OPENINGS

Section
§ 4-301 Town Way Openings

There shall be no Roadway openings on a Town Way unless a Town of Jay Road Opening Permit is issued by the Road Commissioner or his designee. The repair of all openings shall be made in accordance with the conditions outlined in the Town of Jay Road Opening Permit. The cost of all repairs shall be borne by the Person requesting the opening.

**CHAPTER IV
SETBACK REQUIREMENTS**

Part

1. Setback Requirements

PART 1

SETBACK REQUIREMENTS

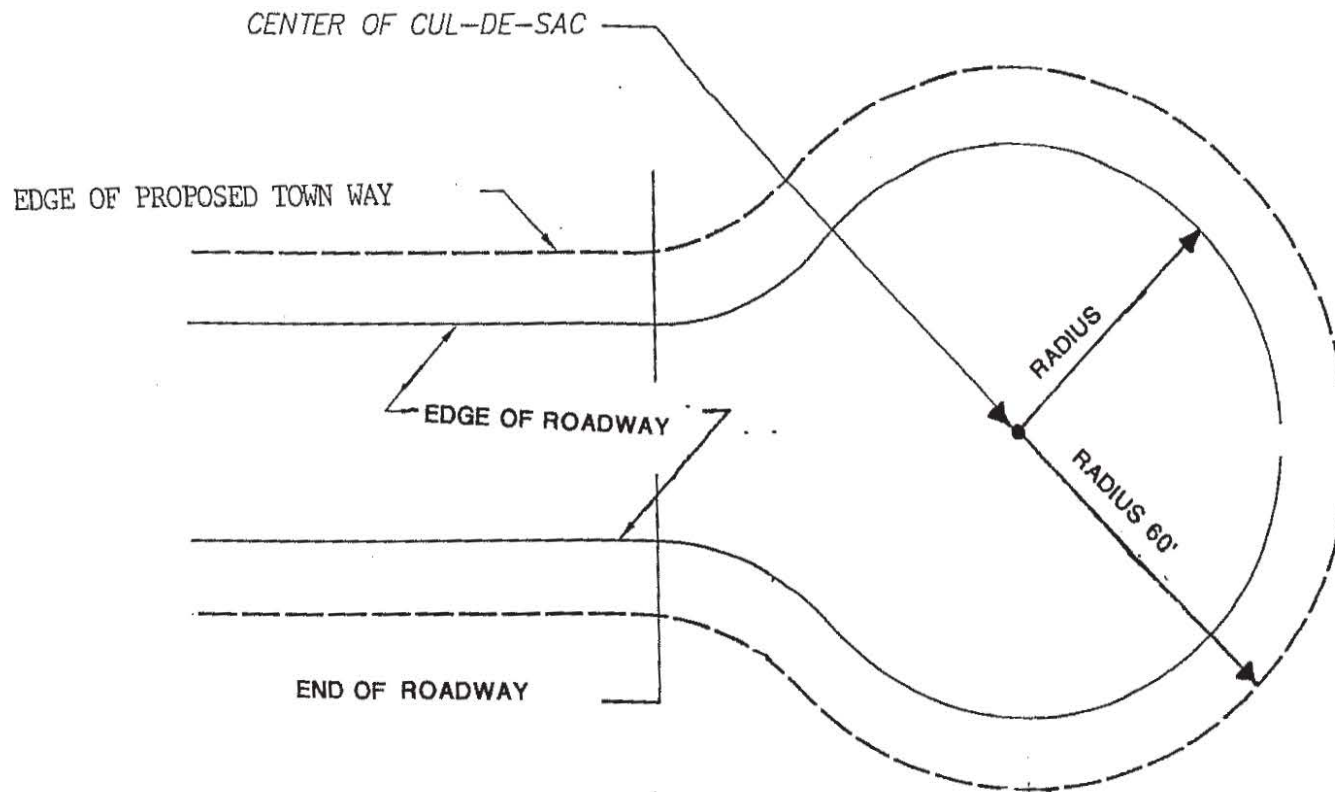
Section

§ 5-101 Setback Requirements

- A. Any Structure installed, erected or constructed within the Town of Jay shall be setback a minimum of 25 feet from the center line of the Roadway or beyond the established right of way of any Abutting Town Way or State highway (additional setback requirements may be applicable to State highways).

This Section shall not apply to the installations or other property devoted to the public use of any public utility or district and underground pipelines.

- B. Any other objects placed or constructed within 25 feet of the center line of the Roadway or within the established right of way of any abutting Town Way or State highway shall not be the responsibility of the Town and any Person placing such objects within this area shall release the Town, its officials, agents and employees from any and all suits, claims and demands whatsoever for any personal or bodily injury, death or property damage related in any way to the placement of such objects within this area, including but not limited to road reconstruction, realignment of the road, winter maintenance operations, and any damage to property resulting from the decreased set back distance.
- C. A person who violates this Section commits a civil violation for which a fine of not more than \$500 may be assessed. In the event that the violation is not corrected in the time specified, an additional fine of not more than \$50 for each day the violation is maintained may be assessed.



I

ILLUSTRATION
CUL-DE-SAC TURN-AROUND
APPENDIX A

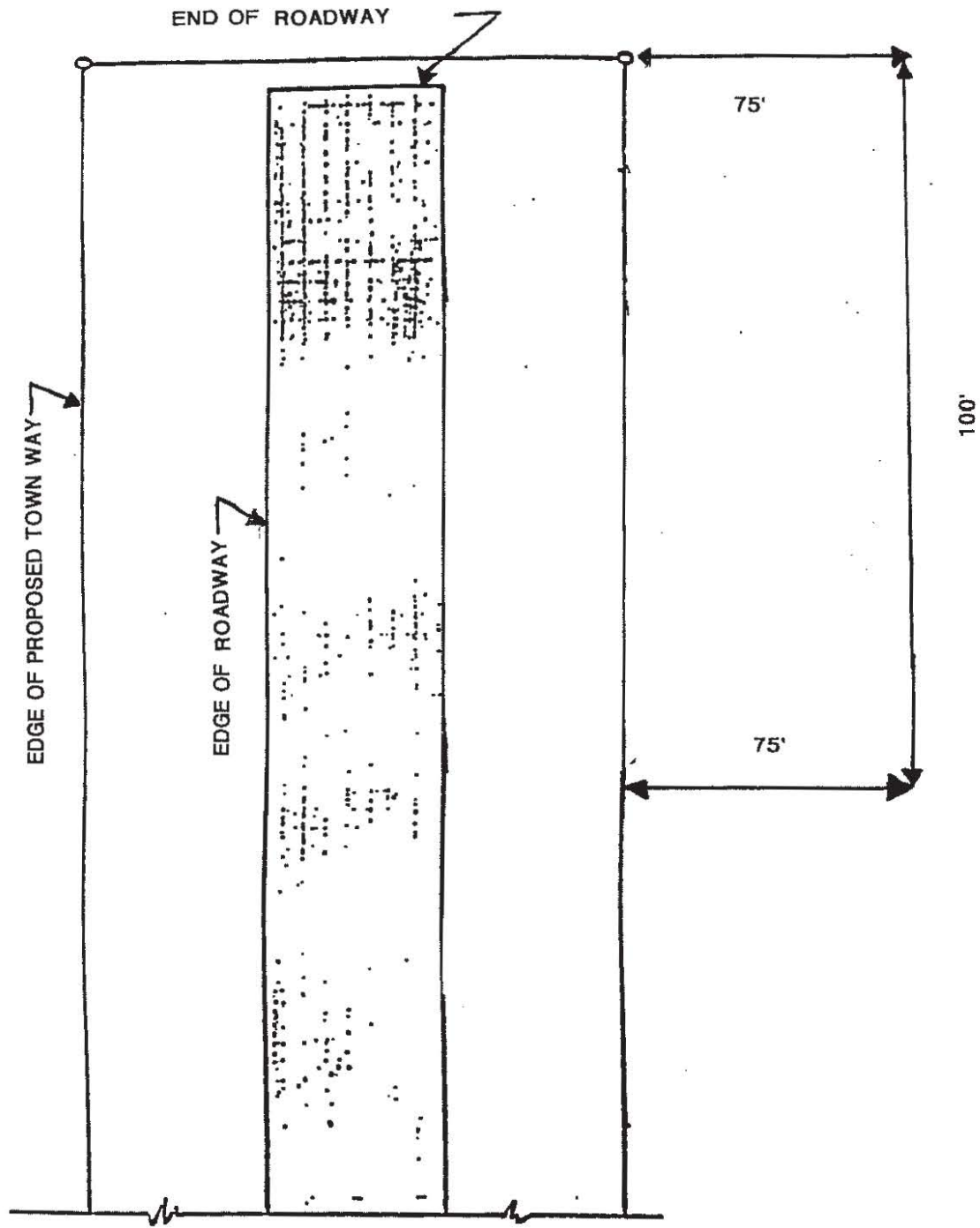


ILLUSTRATION
HAMMERHEAD TURN-AROUND
APPENDIX B

TOWN OF JAY SEWER USE ORDINANCE

A TRUE COPY ATTEST CERTIFIED BY:

Ronda L. Palmer, Town Clerk

Adopted June 8, 2010
Amended: June 12, 2018

**TOWN OF JAY
SEWER USE ORDINANCE**

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TOWN OF JAY

SEWER USE ORDINANCE

Pursuant to Title 30-A, Chapter 161, other applicable authority in Maine and amendments thereto, the following is an Ordinance regulating the use of public and private sewers, private wastewater disposal, the installation and connection of building sewers, and the discharge of waters and wastes into the public sewer system(s), and providing penalties for violations thereof, in the Town of Jay, County of Franklin, State of Maine.

Be it ordained and enacted by the Town as follows:

SECTION 1 - GENERAL PROVISIONS

1.1 Purpose and Policy

This Ordinance sets forth uniform requirements for Users of the Publicly Owned Treatment Works (POTW) of the Town and enables the Town to comply with all applicable local, State and Federal laws, ordinances and regulations, including the Jay Environmental Control and Improvement Ordinance, the Clean Water Act (33 of United States Code § 1251 et seq.), the General Pretreatment Regulations (40 Code of Federal Regulations Part 403), and 06-096 CMR Chapter 528 Pretreatment Program. Recognizing that significant opportunities exist to reduce or prevent pollution at its source through cost effective practices, and that such practices can offer savings through reduced purchases of materials and resources, a decreased need for pollution control technologies, and lower liability costs, as well as assisting to protect the environment, the Town establishes the following objectives of this Ordinance:

A. To promote, consistent with the policy of the federal government:

- The prevention or reduction of pollutants at the source whenever feasible;
- Recycling in an environmentally safe manner when pollution cannot be prevented;
- Treatment in an environmentally safe manner of pollution that cannot be prevented or recycled; and
- Disposal or other release into the environment in an environmentally-safe manner only as a last resort.

To encourage the development of these efforts, the Town may:

- Set Town wide pollution prevention goals;
- Organize an assessment program task force;
- Review water quality data and inspect sites;
- Develop pollution prevention options;
- Conduct a feasibility analysis of selected options; and
- Promote implementation of pollution prevention techniques.

B. To prevent the introduction of pollutants into the POTW that will interfere with its operation.

C. To prevent the introduction of pollutants into the POTW that will pass through the POTW, inadequately treated, into receiving waters, or otherwise be incompatible with the POTW.

D. To protect both POTW personnel who may be affected by wastewater and sludge in the course of their employment and the general public.

E. To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the POTW.

F. To enable the Town to comply with its Maine Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other federal or State law to which the POTW is subject.

This Ordinance shall apply to all Users of the POTW. The Ordinance authorizes the issuance of industrial discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires User reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

1.2 Administration

Except, as otherwise provided herein, the Superintendent, at the direction of the Selectmen, shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon the Superintendent may be delegated by the Superintendent to other Town personnel.

1.3 Abbreviations

The following abbreviations, when used in this Ordinance, shall have the following designated meanings:

- BOD - Biochemical Oxygen Demand
- BMP - Best Management Practice
- BMR - Baseline Monitoring Report
- CFR - Code of Federal Regulations
- COD - Chemical Oxygen Demand
- CIU- categorical Industrial User
- EPA - United States Environmental Protection Agency
- gpd - Gallons per day
- IDP - Industrial Discharge Permit
- IU - Industrial User
- mg/l - Milligrams per liter
- Maine DEP (DEP) - Maine Department of Environmental Protection
- MEPDES - Maine Pollutant Discharge Elimination System
- POTW - Publicly Owned Treatment Works
- RCRA - Resource Conservation and Recovery Act
- SIC - Standard Industrial Classification
- SIU - Significant Industrial User
- SNC - Significant Noncompliance

- TDS - Total Dissolved Solids
- TSS - Total Suspended Solids
- USC - United States Code

1.4 Definitions

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Ordinance, shall have the meanings hereinafter designated.

~~A.~~—Act or the Act. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq.

~~B.~~—Approval Authority. State of Maine DEP or their duly appointed agent.

~~C.~~—Authorized or Duly Authorized Representative of the User.

~~1.~~—If the User is a corporation: The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.

~~2.~~—The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure longterm environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

~~3.~~—If the User is a partnership or sole proprietorship: A general partner or proprietor, respectively.

~~4.~~—If the User is a Federal, State, or local governmental facility: A director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility.

~~5.~~—The individuals described in paragraphs 1 through 3, above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the Town.

~~D.~~—Biochemical Oxygen Demand or BOD. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 degrees centigrade, usually expressed as a concentration (e.g., mg/l).

~~E.~~—Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the

prohibitions listed in Section 2.1 A and B [40 CFR 403.5(a)(1) and (b)]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

~~F.~~—Building Drain. That part of the lowest horizontal piping of a drainage system that receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.

~~G.~~—Building Sewer. The pipe from the building drain to the public sewer, including the connection to the sewer main, also called the house or service connection.

~~H.~~—Bypass. The intentional diversion of waste streams from any portion of a wastewater treatment facility.

~~I.~~—Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limitations promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

~~J.~~—Categorical Industrial User. An Industrial User subject to a categorical Pretreatment Standard or categorical Standard.

~~K.~~—Chemical Oxygen Demand or COD. A measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water

~~L.~~—Combined Sewer. A sewer intended to receive both wastewater and storm or surface water.

~~M.~~—Commercial Use. Premises used for financial gain, such as business or industrial use, but excluding residential uses and related accessory uses.

~~N.~~—Commissioner. The Commissioner of the Maine Department of Environmental Protection or the commissioner's duly appointed agent.

~~O.~~—Compatible Pollutant. Biochemical oxygen demand, suspended solids, pH, and fecal coliform bacteria.

~~P.~~—Control Authority. The term Control Authority as used in this Ordinance, refers to the Town of Jay Publicly Owned Treatment Works.

~~Q.~~—Daily Maximum. The arithmetic average of all effluent samples for a pollutant collected during a calendar day.

~~R.~~—Daily Maximum Limit. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum

Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

~~S.~~ Domestic Wastewater or Sewage. Normal water-carried household and toilet wastes or waste from sanitary conveniences of residences, commercial buildings, and industrial plants, excluding ground, surface, or storm water. (See also: Industrial Wastes.)

~~T.~~ Easement. An acquired legal right for the specific use of land owned by others.

~~U.~~ Environmental Protection Agency or EPA. The United States Environmental Protection Agency or, where appropriate, the EPA Regional Water Management Division Director, or other duly authorized official of said agency.

~~V.~~ Existing Source. Any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical Pretreatment Standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

~~W.~~ Floatable Oil. Oil, fat, or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the collection system.

~~X.~~ Force Main. A line without access from individual properties, providing a connection from a pump station to a pump station, trunk, or sanitary sewer main.

~~Y.~~ Garbage. The animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.

~~Z.~~ Grab Sample. A sample that is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.

~~AA.~~ Grease. The material removed from a grease interceptor (trap) serving a restaurant or other facility which requires such grease interceptors. Also means volatile and non-volatile residual fats, fatty acids, soaps, waxes and other similar materials.

~~AB.~~ Hauler. Those persons, firms, or corporations, who pump, haul, transport, or dispose of septage and who are licensed by the Maine DEP.

~~AC.~~ Human Excrement and other Putrescible Material. The liquid or solid matter discharged from the intestinal canal of a human, or other liquid or solid waste materials that are likely to undergo bacterial decomposition; (provided, however, that these terms shall not include refuse as defined by Maine DEP SWMR Chapter 400).

~~AD.~~ Incompatible Pollutant. Any pollutant that is not a compatible pollutant.

~~AE.~~ Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.

~~AF.~~—Industrial Discharge Permit. The written permit between the Town and an Industrial User that outlines the conditions under which the wastewater discharge to the POTW will be accepted.

~~AG.~~—Industrial User. A person who discharges industrial wastewater to the POTW of the Town.

~~AH.~~—Industrial Wastes or Non-Domestic Wastewater. The wastewater and waterborne wastes from any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacturing trade or business or from development of any natural resources as distinct from domestic wastewater, sewage or unpolluted water.

~~AI.~~—Instantaneous Discharge Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.

~~AJ.~~—Interference. A discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore is a cause of a violation of the Town's MEPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as RCRA; any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; the Marine Protection, Research, and Sanctuaries Act; 40 CFR Part 503 Standards for Sewage Sludge Use and Disposal.

~~AK.~~—Jay Planning Board. The Planning Board of the Town of Jay.

~~AL.~~—Jay Water Permit. A wastewater discharge permit issued by the Jay Planning Board.

~~AM.~~—Local Limits. Specific numerical discharge limits developed and enforced by the Town upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b). These limits are distinct from State or federal limitations for non-domestic wastewater discharged to the POTW.

~~AN.~~—May. Means permissive.

~~AO.~~—Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, chemotherapy wastes, and dialysis wastes.

~~AP.~~—Maine Pollutant Discharge Elimination System Permit or MEPDES Permit. A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

~~AQ.~~—Monthly Average. The sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

~~AR.~~—Monthly Average Limit. The highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

~~AS.~~—Natural Outlet. Any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake, or other body or surface water or groundwater.

~~AT.~~—New Source.

~~1.~~—Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced subsequent to the publication of proposed Pretreatment Standards under Section 307(c) of the Act that will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

~~1.a.~~—The building, structure, facility, or installation is constructed at a site at which no other source is located; or

~~1.b.~~—The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

~~1.c.~~—The production or wastewater-generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, will be considered.

~~2.~~—Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

~~2.a.~~—Begun, or caused to begin, as part of a continuous on-site construction program

(2.a.1) Any placement, assembly, or installation of facilities or equipment; or

(2.a.2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities that is necessary for the placement, assembly, or installation of new source facilities or equipment; or

~~2.b.~~—Entered into a binding contractual obligation for the purchase of facilities or equipment that are intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

~~3.~~—Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure,

facility, or installation meeting the criteria of Section 1.b or 1.c above but otherwise alters, replaces, or adds to existing process or production equipment.

~~AU.~~—Normal Domestic Wastewater. Wastewater generated by residential Users containing not more than 200 mg/1 BOD and not more than 250 mg/1 suspended solids.

~~AV.~~—Non-Contact Cooling Water. Water used for cooling that does not directly contact any raw material, intermediate product, waste product, or finished product.

~~AW.~~—Pass Through. A discharge that exits the POTW into waters of the United States in quantities or concentrations that, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the Town's MPDES or Jay Water Permit, including an increase in the magnitude or duration of a violation.

~~AX.~~—Person. Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, State, and local governmental entities.

~~AY.~~—pH. A logarithmic measure devised to express the hydrogen ion concentration of a solution, expressed in Standard Units. Solutions with pH values greater than 7 are basic (or alkaline); solutions with pH values less than 7 are acidic.

~~AZ.~~—Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

~~BA.~~—Pollution Prevention. The use of materials, processes, or practices that reduce or eliminate the creation of pollutants or wastes at the source, or minimize their release to the environment prior to recycling, treatment or disposal. It includes practices that reduce the use of hazardous materials, energy, water or other resources. It also includes practices that protect natural resources and human health through conservation, more efficient use, or effective release minimization.

~~BB.~~—Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable Pretreatment Standard.

~~BC.~~—Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on a User, other than a Pretreatment Standard.

~~BD.~~—Pretreatment Standards or Standards. Pretreatment Standards shall mean prohibited discharge standards, categorical Pretreatment Standards, and Local Limits.

~~BE.~~—Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances as identified in Section 2.3 of this Ordinance.

~~BF.~~—Properly Shredded Garbage. Wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be transported freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch in any dimension.

~~BG.~~—Public Sewer. A pipe or conduit that carries wastewater, storm water, groundwater, subsurface water, or unpolluted water from any source, which is controlled by a governmental agency or public utility.

~~BH.~~—Publicly Owned Treatment Works or POTW. A "treatment works," as defined by Section 212 of the Act (33 U.S.C. §1292) that is owned by the Town. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if these structures convey wastewater to a wastewater treatment facility. A building sewer is not part of the POTW. The term also means the municipality that has jurisdiction over discharges to and from such a treatment plant, and any sewer that conveys wastewater to the POTW from persons outside the Town who are, by contract or agreement with the Town, Users of the Town's POTW.

~~BI.~~—Recreational Vehicle or "RV". A mobile vehicle or trailer used for temporary living e.g. a camper or wholly self-contained transport and living unit.

~~BJ.~~—Sanitary Sewer. A sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial facilities, and institutions, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

~~BK.~~—Screening Level. That concentration of a pollutant that under baseline conditions would cause a threat to personnel exposed to the pollutant, or would adversely impact the process or structures of the POTW. To be administered as Local Limits applicable to a particular discharge, the screening levels must be adjusted to account for conditions at the point of discharge that differ from baseline conditions.

~~BL.~~—Semi-Public Use. Premises of private, non-profit organizations such as schools, hospitals, and religious institutions.

~~BM.~~—Septage or Septic Tank Waste. Any liquid, solid, or sludge pumped from chemical toilets, vaults, septic tanks, cesspools or other holding tanks, that have received only domestic wastewater.

~~BN.~~—Septage Tank Truck. Any watertight vehicle that is used for the collection and hauling of septage as described above and that complies with the rules of the Maine Department of Environmental Protection.

~~BO.~~—Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.).

~~BP.~~ Sewer. A pipe or conduit that carries wastewater, storm water, groundwater, subsurface water, or unpolluted water from any source.

~~BQ.~~ Shall. Means mandatory.

~~BR.~~ Significant Industrial User (SIU).

Except as provided in paragraphs 3 and 4 of this definition, a Significant Industrial User is:

~~1.~~ An Industrial User subject to categorical Pretreatment Standards under 40 CFR 403.8 and 40 CFR Chapter I, Subchapter N; or

~~2.~~ An Industrial User that:

~~2.a.~~ Discharges an average of twentyfive thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);

~~2.b.~~ Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

~~2.c.~~ Is designated as such by the Town of Jay on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement.

~~3.~~ Upon a finding that a User meeting the criteria in Subsection 2 of this part has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or requirement, the Town may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a Significant Industrial User.

~~BS.~~ Significant Noncompliance or SNC. An Industrial User is in significant noncompliance if its violation meets one or more of the following criteria:

~~1.~~ Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of all the measurements taken for the same pollutant parameter taken during a 6 month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 2;

~~2.~~ Technical Review Criteria (TRC) violations, defined here as those in which 33% or more of wastewater measurements taken for each pollutant parameter during a 6 month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 2 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

~~3.~~ For pH monitoring, excursions shall be considered SNC when:

~~3.a.~~—The total time during which the pH values are outside the required range of pH values exceeds 7 hours and 26 minutes in any calendar month; or

~~3.b.~~—An individual excursion from the range of pH values exceeds 60 minutes; or

~~3.e.~~—An excursion occurs that the Town believes has caused, alone or in combination with other discharges, interference or pass-through; or has endangered the health of the sewage treatment personnel or the general public; or

~~3.d.~~—Any pH less than or equal to 2.0 or greater than or equal to 12.5.

~~4.~~—Any other discharge violation (including but not limited to Daily Maximum, longterm average, Instantaneous Limit, or narrative standard) that the Superintendent believes has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;

~~5.~~—Any discharge of pollutants that have caused imminent endangerment to the public or to the environment, or have resulted in the Superintendent's exercise of its emergency authority to halt or prevent such a discharge;

~~6.~~—Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or Enforcement Order for starting construction, completing construction, or attaining final compliance;

~~7.~~—Failure to provide within forty five (45) days after the due date, any required reports, including baseline monitoring reports, Industrial Discharge Permit applications, reports on compliance with categorical Pretreatment Standard deadlines periodic self-monitoring reports, and reports on compliance with compliance schedules;

~~8.~~—Failure to accurately report noncompliance; or

~~9.~~—Any other violation(s), which may include a violation of Best Management Practices, which the Superintendent determines will adversely affect the operation or implementation of the local pretreatment program.

~~BT.~~—Slug Load or Slug Discharge. Means:

~~1.~~—Any Discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or a noncustomary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or Permit conditions;

~~2.~~—Any discharge at a flow rate or concentration that could cause a violation of the prohibited discharge standards in Section 2.3 of this Ordinance; or

~~3.~~—Any discharge that may adversely affect the collection system and/or performance of the POTW.

~~BU.~~—Source Reduction. Any practice that:

~~1.~~—Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

~~2.~~—Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

~~3.~~—The term includes equipment or technology modifications; process or procedure modifications; reformulation or redesign of products; substitution of raw materials; and improvements in housekeeping, maintenance, training, or inventory control. The term "source reduction" does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity that itself is not integral to and necessary for the production of a product or the providing of a service.

~~BV.~~—Standard Industrial Classification (SIC) Code. A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

~~BW.~~—State. The State of Maine.

~~BX.~~—Storm Drain or Storm Sewer. A drain or sewer for conveying storm water, groundwater, subsurface water, or unpolluted water from any source.

~~BY.~~—Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

~~BZ.~~—Superintendent. The person designated by the Town to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this Ordinance, or a duly authorized representative.

~~CA.~~—Suspended Solids or Total Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

~~CB.~~—Town. The Town of Jay, Maine

~~CC.~~—Treatment Plant or Treatment Facility. Any device or system used in the storage, treatment, equalization, recycling or reclamation of municipal wastewater, industrial wastewater and/or wastewater sludges as defined herein.

~~CD.~~—Unpolluted Water. Water of quality equal to or better than the State Water Quality Standards or water that would not cause a violation of receiving water quality standards and would not be benefitted by discharge to the POTW.

~~CE.~~—User or Industrial User. A source of pollutants introduced into the POTW from any domestic or non- domestic source regulated under Section 307 (b), (c), or (d) of the Act.

~~CF.~~—Wastewater. Liquid and water-carried industrial wastes and/or sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

~~CG.~~—Watercourse. A natural or artificial channel for the passage of water either continuously or intermittently.

1.5 Reference Codes

Various sections of the Ordinance refer to statutes, regulations and guidelines administered by the United States Environmental Protection Agency, the Maine Department of Environmental Protection, and agencies of the State of Maine. The Ordinance adopts these provisions as its own.

A copy of the codes incorporated by reference may be found by contacting the Superintendent.

The codes incorporated by reference may be amended from time to time by state or federal government. In the event such codes are amended by state or federal government, the reference code shall be deemed automatically amended as of the effective date thereof and are enforceable under this Ordinance as amended, unless doing so would clearly and directly conflict with another provision of this Ordinance. Any person aware of a conflict is encouraged to contact the Superintendent.

SECTION 2 - GENERAL SEWER USE REQUIREMENTS

2.1 Use of Public Sewers

- A. It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the Town of Jay or in any area under the jurisdiction of said Town, any human or animal excrement, garbage or objectionable waste.
- B. It shall be unlawful to discharge to any natural outlet within the Town, or in any area under the jurisdiction of said Town, any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Ordinance and with local, State and Federal laws and regulations.
- C. Sewers For Intended Uses Only. No person shall discharge into any public sewer of the Town, or into any fixture that thereafter discharges into any public sewer, any waste or substance other than for which the particular sewer is intended, designed or provided.
- D. Applicable Permits Required. No person shall discharge into any public sewer of the Town, or into any fixture that thereafter discharges into any public sewer, any waste or substance until all applicable Federal, State and local permits have been obtained.
- E. Use of Sanitary Sewers. Except as specifically provided with reference to some particular sewer, sanitary sewers shall be used only for the conveyance and disposal of domestic wastewater, and for industrial wastes that are not objectionable as hereinafter provided. No sanitary sewer shall be used to receive and convey or dispose of any storm or surface water, subsoil drainage, or unpolluted water.
- F. Use of Storm Sewers. Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designed as storm sewers, or a natural outlet approved by the Town. An MEPDES permit is required prior to discharging industrial cooling water, process waters, or storm water runoff generated in areas of industrial activity (as defined in 40 CFR Part 122) to a storm sewer or natural outlet.
- G. Use Designation. If the intended or designated use of any particular sewer or drain and allowable discharge thereto is unclear, the Town will consider the pertinent facts and make a determination. Said determination will be final and binding.
- H. Connection to Sewer. The owner(s) of all houses or buildings used for human occupancy, employment, recreation, or other purposes, situated within the Town and abutting on any street, alley, or right-of-way where a public sanitary sewer of the Town is now available or becomes available shall:
1. Install suitable toilet facilities therein if used for occupancy or employment;
 2. Connect toilet facilities directly with the proper public sewer in accordance with applicable provisions of this Ordinance;

3. Make such connection at the owner(s)' sole expense;
4. Complete such connection within ninety (90) days after receipt of written notice to do so unless a written waiver of this time period is granted by the Superintendent for good cause shown. A waiver shall be accompanied by a new date for compliance; and
5. Cease use of any existing septic tanks, cesspools, and other method for the disposal of waste water and clean such facilities and fill them with clean mineral soils to the satisfaction of the Superintendent.

No person shall construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater in any area where a public sewer is now available or becomes available. Owner(s) otherwise subject to this paragraph may be exempted pursuant to Paragraph I, below.

I. Exemption from Connection Requirement. The following owner(s) otherwise subject to Paragraph H are exempt:

1. Owner(s) of houses or buildings located more than three hundred (300) feet from the public sanitary sewer of the Town. If any part of a house or building is located within three hundred (300) feet from the public sanitary sewer of the Town the Owner(s) are subject to Paragraph H, above;
2. Owner(s) of houses or buildings already connected to a properly functioning State-approved septic system installed prior to the effective date of this Ordinance. If the plumbing inspector determines that the system is no longer a properly functioning system, the Owner(s) are no longer exempt and must comply with Paragraph H, above, unless otherwise exempt under Paragraphs I(1) or (3); and
3. Owner(s) granted a waiver by the Superintendent. The Superintendent may grant a waiver or an extension of time within which to connect to the public sanitary sewer of the Town upon a showing of unusual site conditions or an undue hardship, and that the present or proposed alternative disposal system is adequate. A waiver may be granted to the applicant for a fixed period of time at the discretion of the Superintendent. The applicant may appeal a final waiver determination by the Superintendent under this Section in accordance with Section 14.2 of this Ordinance.

Owners exempt from Paragraph H shall operate and maintain their private wastewater disposal facilities in a sanitary manner at all times, at no expense to the Town.

J. No statement contained in the preceding paragraphs of this Section shall be construed to interfere with any additional requirements that may be imposed by the Plumbing Inspector.

K. No person(s) shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment that is part of the POTW.

2.2 Building Sewers and Connections

A. No person(s) shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining written permission from the Superintendent or his representative.

B. There shall be two (2) classes of building sewer permits: (1) for residential and commercial service producing only domestic wastewater, and (2) for service to establishments producing industrial wastes. For residential and commercial services, the owner(s) or his agent shall make application on a special form furnished by the Town (see Exhibit B) at least five (5) business days prior to said service connection. For an establishment discharging industrial wastes, the application shall be made at least thirty (30) days prior to said service connection. The permit application shall be supplemented by any plans, specifications, or other information (including pollution prevention studies) considered pertinent in the judgment of the Superintendent. A permit and inspection fee of one hundred dollars (\$100.00) for a residential building sewer permit and two hundred dollars (\$200.00) for a multi-unit residential, commercial, or industrial building sewer permit shall be paid to the Town at the time the application is filed.

C. All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner(s). The owner(s) shall indemnify the Town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

D. A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway. In such cases, the front building sewer may be extended to the rear building and the whole considered as one building sewer, but the Town does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection.

D.1. The owner of two abutting existing structures may connect together in one building sewer provided one building sewer is already connected to the public sewer. The owner shall file in the Registry of Deeds an agreement signed by the Town and the owner with reference to deeds, that the two structures share a building sewer and that the Town is not responsible for maintenance of the building sewer. The Superintendent shall determine if the building sewer size is sufficient to carry the wastewater.

E. Existing building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent to meet all requirements of this Ordinance. The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the Town. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the American Society for Testing and Materials (ASTM) and Water Environment Federation (WEF) Manual of Practice No. FD-5 shall apply.

F. During construction of a new sanitary sewer, or replacement of an existing sewer, the Town may construct the service connections for existing buildings to the curb or the property line or the edge of a right-of-way. Construction of the building sewer, including connection to the structures served, shall be the responsibility of the owner of the improved property to be connected; and such owner shall indemnify and save harmless the Town, its officers, and agents from all loss or damage that may result, directly or indirectly, due to the construction of a building sewer on his premises or its connection to the service connection. The owner shall thereafter be obligated to pay all costs and expenses of operation, repair and maintenance, and of reconstruction, if needed of the building sewer and service connection.

G. Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sewage conveyed by such building drain shall be lifted by an approved means and discharged to the building sewer at the owner's expense.

H. No person(s) shall make connection of roof downspouts, interior or exterior foundation drains, area- way drains, or other sources of surface run-off or groundwater to a building sewer or building drain that in turn is connected directly or indirectly to a public sanitary sewer.

I. No person shall obstruct the free flow of wastewater in any main or service connection.

J. The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the Town, or the procedures set forth in appropriate specifications of the ASTM and the WEF Manual of Practice No. FD-5. All such connections shall be made gas-tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Superintendent before installation.

K. The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. Such notice shall be provided not less than 48 hours in advance of the time any connection is to be made to any public sewer. The connection and testing shall be made under the supervision of the Superintendent or his representative. This requirement shall also apply to repairs or alterations to building connections, drains or pipes thereto.

L. Suitable provisions shall be made at the point of connection for testing, which responsibility shall rest with the holder of the sewer connection permit.

M. No building sewer shall be covered until it has been inspected and approved by the Superintendent. If any part of building sewer is covered before being inspected and approved, it shall be uncovered for inspection at the cost and expense of the owner of the improved property to be connected to the public sewer.

N. The Superintendent shall maintain a record of all connections made to public sewers and drains under this Ordinance and all repairs and alterations made to building connections or drains connected to or discharging into public sewers and drains of the Town or intended to so

discharge. All persons concerned shall assist the Superintendent in securing the data needed for such records.

O. All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Town at the expense of the owner.

P. Proposed new discharges from residential or commercial sources involving loadings exceeding 50 population equivalents (5,000 gpd), any new industrial discharge, or any alteration in either flow or waste characteristics of existing industrial wastes that are being discharged into the POTW must be approved by the DEP. Such approvals from DEP shall be submitted to the Town. Existing users shall report changed conditions and obtain Town approval in accordance with the requirements of Section 6.5 of this Ordinance regardless of whether the wastewater source is residential, commercial or industrial.

Q. The use of backflow preventers is required not later than six (6) months after the effective date of this Ordinance and is encouraged immediately. The Town will not be responsible at any time for the backup of wastewater into homes or businesses without backflow preventers (or with faulty backflow preventers), or for any damages that may be caused as a result. A written exemption or extension of the deadline for compliance with this requirement may be granted by the Superintendent provided the relevant Owner(s) execute an indemnification and hold harmless agreement in a form acceptable to the Town and upon a showing of good cause. A determination as to whether to grant an exemption or extension may be appealed pursuant to Section 14.2 of this Ordinance.

2.3 Prohibited Discharge Standards

Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

A. General Prohibitions. No User shall introduce or cause to be introduced into the POTW any pollutant or wastewater that causes Pass Through or Interference. These general prohibitions apply to all Users of the POTW whether or not they are subject to categorical Pretreatment Standards or any other federal, State, or local Pretreatment Standards or requirements.

B. Specific Prohibitions. No User shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

1. Pollutants which create a fire or explosive hazard in the POTW, gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, gas, solid, or any substance that may generate or form any flammable, combustible or explosive substance, fluid, gas, vapor or liquid when combined with air, water or other substances present in sewers, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;

2. Wastewater having a pH less than 5.0 or greater than 11.0, as measured at the point of connection to the sanitary sewer or other available monitoring location, or otherwise causing corrosive structural damage or hazard to the POTW equipment, or personnel, or with acidity or alkalinity in such quantities that the pH of the influent to the POTW is caused to drop below 6.5 or exceed 8.0;
3. Solid or viscous substances including water or wastes containing fats, wax, grease, or oils, whether emulsified or not, or containing substances that may solidify or become viscous at temperatures between 32° F and 150° F (0° C to 65° C), in amounts that will cause obstruction of the flow in the POTW resulting in Interference;
4. Pollutants, including oxygen-demanding pollutants (BOD, COD, etc.), or chlorine demand requirements released in a discharge at a flow rate and/or pollutant concentration that, either singly or by interaction with other pollutants, will cause Interference with the POTW;
5. Wastewater having a temperature greater than 90° F (32° C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater that causes the temperature at the introduction into the POTW treatment plant to exceed 80° F (27° C);
6. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause Interference or Pass Through;
7. Pollutants that result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
8. Trucked or hauled pollutants, except at discharge points designated by the Superintendent in accordance with Sections 3.5 and 4.8 of this Ordinance;
9. Medical wastes, except as specifically authorized in a wastewater discharge permit;
10. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent or sludge to fail a toxicity test;
11. Household hazardous wastes including but not limited to paints, stains, thinners, pesticides, herbicides, mercury or other heavy metals, anti-freeze, transmission and brake fluids, motor oil and battery acid; and
12. Nutrients in excessive amounts, as determined by the Superintendent.

C. Additional Prohibitions. No User shall introduce or cause to be introduced into the POTW the following substances, pollutants or wastewater, unless specifically authorized by the Superintendent in a wastewater discharge permit:

1. Noxious or malodorous liquids, gases, solids, or other wastewater that, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;

2. Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations;
3. Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water, or otherwise unpolluted wastewater (the Town may assess an appropriate additional fee for the discharge of unpolluted water);
4. Sludges, screenings, or other residues from the pretreatment of industrial wastes;
5. Detergents, surface-active agents, or other substances that may cause excessive foaming in the POTW;
6. Wastewater causing a reading on an explosion hazard meter at the point of discharge into the POTW, or at any point within the POTW, of more than 10 percent CH₄ of the Lower Explosive Limit of the meter;
7. Garbage that has not been properly shredded (garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments, or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers);
8. Any quantities of flow, concentrations, or both that constitute a "Slug or Slug Discharge" as defined in Section 1.4 of this Ordinance;
9. Waters or wastes that, by interaction with other water or wastes in the POTW, release dangerous or noxious gases, form suspended solids that affect the operation of the collection system, or create a condition deleterious to structures and treatment processes;
or
10. Any materials that exert or cause unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime, slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).

2.4 National Categorical Pretreatment Standards

Users must comply with the categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts 405–471 and are hereby incorporated into the Ordinance.

A. Where a categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Superintendent may impose equivalent concentration or mass limitations in accordance with 40 CFR 403.6(c).

B. When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Superintendent may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users in accordance with 40 CFR 403.6(c)(2).

C. When wastewater subject to a categorical Pretreatment Standard is mixed with wastewater not regulated by the same standard, the Superintendent shall impose an alternate limit using the combined waste stream formula in 40 CFR 403.6(e).

D. A User may obtain a variance from a categorical Pretreatment Standard if the User can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical Pretreatment Standard.

E. A User may obtain a net/gross adjustment to a categorical standard in accordance with 40 CFR 403.15 as follows:

1. Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this Section. Any Industrial User wishing to obtain credit for intake pollutants must make application to the Town. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of paragraph 2 are met.

2. Criteria.

- a. Either (1) The applicable categorical Pretreatment Standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or (2) The Industrial User demonstrates that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.

- b. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

- c. Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this Section.

- d. Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Town may waive this requirement if it finds that no environmental degradation will result.

F. When a categorical Pretreatment Standard is expressed only in terms of pollutant concentrations, an Industrial User may request that the Town convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the

discretion of the Superintendent. The Town may establish equivalent mass limits only if the Industrial User meets all the conditions set forth in Sections 1.a through 1.e below.

1. To be eligible for equivalent mass limits, the Industrial User must:
 - a. Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its individual wastewater discharge permit;
 - b. Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;
 - c. Provide sufficient information to establish the facility's actual average daily flow rate for all waste streams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;
 - d. Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and
 - e. Have consistently complied with all applicable categorical Pretreatment Standards during the three-year period prior to the Industrial User's request for equivalent mass limits.
2. An Industrial User subject to equivalent mass limits must:
 - a. Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
 - b. Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;
 - c. Continue to record the facility's production rates and notify the Superintendent whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in paragraph F.1.c. above. Upon notification of a revised production rate, the Superintendent will reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and
 - d. Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to paragraphs F.1.a. above so long as it discharges under an equivalent mass limit.
3. When developing equivalent mass limits, the Superintendent:

- a. Will calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based Daily Maximum and Monthly Average Standard for the applicable categorical Pretreatment Standard and the appropriate unit conversion factor;
- b. Upon notification of a revised production rate, will reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and
- c. May retain the same equivalent mass limit in subsequent individual wastewater discharger permit terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to Section 2.8.

G. Once included in its permit, the Industrial User must comply with the equivalent limitations developed in this Section in lieu of the promulgated categorical Standards from which the equivalent limitations were derived.

H. Many categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum Monthly Average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

I. Any Industrial User operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based Standard shall notify the Superintendent within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Superintendent of such anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long term average production rate.

J. The Town shall be the Control Authority for Industrial Users subject to categorical Pretreatment Standards. The Industrial Users are responsible to the Town for compliance with categorical Pretreatment Standards and the requirements of 40 CFR Part 403. Categorical Industrial Users shall provide the Town with copies of any reports to, or correspondence with EPA and/or the State relative to compliance with the categorical Pretreatment Standards.

K. The Industrial User is responsible for determining the applicability of categorical Pretreatment Standards. The User may request that the Town, EPA and/or the State provide written certification on whether the User is subject to the requirements of a particular category.

L. The Town shall provide timely notification to appropriate Industrial Users of applicable categorical Pretreatment Standards. Upon promulgation of the federal categorical Pretreatment Standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this Ordinance for sources in that subcategory, shall,

on the compliance date of the categorical Pretreatment Standards, immediately supersede the limitations imposed under this Ordinance.

M. Compliance with categorical Pretreatment Standards shall be achieved within three (3) years of the date such standards are effective, unless a shorter compliance schedule is specified in the standards.

N. An Industrial User subject to categorical Pretreatment Standards shall not discharge wastewater directly or indirectly to the Town's POTW subsequent to the compliance date of such standards unless an amendment to its Industrial Discharge Permit has been issued by the Town.

2.5 State Pretreatment Standards

Users must comply with State Pretreatment Standards codified at 06-096 CMR Chapter 528 Pretreatment Program.

2.6 Local Discharge Restrictions

All persons discharging industrial process wastes into public or private sewers connected to the Town's POTW shall comply with applicable local requirements, Federal requirements and State standards for pretreatment of wastes as they may be amended from time to time in addition to the requirements of this Ordinance.

Local numerical discharge limitations established by the Town as set forth herein (referred to as "Local Limits"), and all State Pretreatment Standards and categorical Pretreatment Standards shall apply, whichever is most stringent.

In developing the list of pollutants of concern for which local limits are established, the Town has considered the allowable headworks loading at the wastewater treatment facility. Pollutants that exceed fifty percent (50%) of their allowable headworks loading at the Town of Jay wastewater treatment facility are considered to be of concern and have resulted in development of local limits. Pollutants that exceed twenty percent (20%) of their allowable headworks loading at the wastewater treatment facility are targeted for mandatory pollution prevention action.

If any waters or wastes are discharged or are proposed to be discharged to the POTW that exceed the standards or restrictions established in Sections 2.3, 2.4, and 2.5 of this Ordinance, which in the judgment of the Superintendent may have a deleterious effect upon the POTW, processes, equipment, or receiving waters, or that otherwise create a hazard to worker safety or health, or constitute a public nuisance, the Superintendent may:

- ξ Reject or prevent any discharge to the POTW after notice has been served to the discharger and the discharger has had reasonable opportunity to respond;
- ξ Require pretreatment prior to discharge to the POTW (Section 3.0);
- ξ Require control (e.g., equalization) over the quantities and rates of discharge; and/or

ξ Require payment to cover additional cost of handling and treating the wastes.

If the Superintendent allows the pretreatment or equalization of waste flows, the design and installation of the systems and equipment shall be subject to the review and approval of the Superintendent and the State (see Section 3).

A. Local Limits. The Superintendent is authorized to establish Local Limits pursuant to 40 CFR 403.5(c). The following pollutant limits are established to protect against Pass Through and Interference. No person shall discharge wastewater containing the following pollutants constituents at daily average, daily maximum and monthly average concentrations limits and/or equivalent mass loadings greater than the applicable Numerical Limit established for each duration.

POLLUTANT CONCENTRATION LIMIT (mg/l)	POLLUTANT CONCENTRATION LIMIT (mg/l)
BOD ₅	TSS
Ammonia	Total Nitrogen
Oil and/or grease ¹	Total phenols
Arsenic	Mercury
Cadmium	Molybdenum
Chromium	Nickel
Copper	Selenium
Cyanide	Silver
Lead	Zinc

1. Limit should be defined as polar, nonpolar or total oil.

1. Numerical pollutant loading limitations are established to protect against Pass Through and Interference and are based on the Maximum Allowable POTW Headworks Loadings Limitations.

The Superintendent shall calculate and administer daily and monthly concentration limits and/or equivalent mass limits (i.e., local limits) when required as described below to ensure that the combined industrial pollutant discharge loadings do not cause or contribute to exceedances of these limitations. For industrial discharge applications, site specific local limits for above applicable pollutants shall apply at the end of the process train prior to dilution with non-industrial wastewaters and prior to discharge into the municipal collection system.

Daily concentrations are the concentration of a pollutant discharged, determined from the analysis of a flow composited sample (or other sampling procedure approved by the Superintendent) representative of the discharge over the duration of a 24 hour day or industrial operating schedule of less than 24 hours.

All concentration limits for metals represent "total" metal unless indicated otherwise. The Superintendent may impose equivalent mass limitations in addition to concentration based limitations.

Local limits are developed based on the identification of Industrial Users known to be discharging each pollutant (industrial contributory flow procedure). Unless specifically identified in an Industrial Discharge Permit, an Industrial User shall not discharge the locally limited pollutants at concentrations 20 percent greater than the background concentrations used for local limits development.

Pollution prevention activities that result in a decreased discharge of these pollutants to the POTW, such that the headworks loading of a pollutant is less than forty percent (40%) of the allowable loading, may result, at the discretion of the Superintendent, in rescission of a local limit for that pollutant (from this Ordinance).

B. Pollution Prevention Action. Pollutants for which pollution prevention efforts are required of all significant Industrial Users and other industrial and non-Industrial Users at the discretion of the Superintendent include:

The Town will develop site specific pollutant list for each significant Industrial User and other applicable industrial and non-Industrial Users.

Failure to control these pollutants through pollution prevention activities will result in development and application of a local limit when a pollutant loading to the POTW exceeds fifty percent (50%) of the allowable headworks loading.

C. Screening Levels. The following pollutants from significant Industrial Users and other industrial and non-Industrial Users shall not be discharged to the POTW in excess of the concentrations listed below without approval of the Superintendent:

The Town will develop site specific pollutant concentration list for each significant Industrial User and other applicable industrial and non-Industrial Users.

Screening levels are numerical values above which actions are initiated to evaluate, prevent or reduce adverse impacts due to flammability, chemical reactivity, organic/solids loadings, toxicity, or worker health and safety.

If any of the screening levels are exceeded, repeat analysis must be performed to verify compliance or noncompliance with that screening level. If noncompliance is confirmed, then the Significant Industrial Users and other industrial and non-Industrial Users may be required, at the discretion of the Superintendent, to conduct an appropriate engineering evaluation to determine the potential impact of the discharge of this pollutant to the Town's POTW or alternatively, to develop a pollution prevention plan specifically addressing the pollutant that

exceeds the screening level. This study or plan must be conducted under the supervision and approval of the Town. Should the evaluation indicate the impact to be unsatisfactory, the significant Industrial Users and other industrial and non-Industrial Users shall reduce the pollutant concentration to a satisfactory level. If the evaluation supports development of an alternate site-specific limitation, then the screening level shall be adjusted and administered as a limit for the specific discharge.

D. Special Agreements. No statement contained in this Section except for paragraphs 2.3.A, 2.3.B.8, and 2.4 shall be construed as preventing any special agreement or arrangement between the Town and any User, industrial or otherwise whereby a wastewater of unusual strength or character may be accepted by the Town for treatment provided that said agreements do not contravene any requirements of existing Federal or State laws, and/or regulations promulgated thereunder, are compatible with any User charge system in effect, and do not waive applicable federal categorical Pretreatment Standards. Special agreement requests shall require submittal of a pollution prevention plan that specifically addresses the discharge for which a special agreement is requested. For pollutants with numerical local limits, the Town has allocated a percentage of its allowable industrial loadings for such special agreements. Requests for special agreements that exceed this allocation will not be approved.

E. The Superintendent may develop Best Management Practices (BMPs) to implement Local Limits and the requirements of Section 2.3.

2.7 Town's Right of Revision

The Town reserves the right to establish by Ordinance or industrial discharge Permit more stringent Standards or requirements on discharges to the POTW consistent with the purpose of this Ordinance and as outlined below.

The discharge standards and requirements set forth in Sections 2.3, 2.4, 2.5, and 2.6 are established for the purpose of preventing discharges to the POTW that would harm the sewers, wastewater treatment process, or equipment; would have an adverse effect on the receiving stream; or would otherwise endanger lives, limb, public property, or constitute a nuisance.

To meet these objectives, the Superintendent may, from time to time, review and set more stringent standards or requirements than those established in Sections 2.3, 2.4, 2.5, and 2.6 if, in the Superintendent's opinion, such more stringent standards or requirements are necessary. In forming this opinion, the Superintendent may give consideration to such factors as the quantity of wastewater in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, flow and process capacity of the wastewater treatment facility, degree of treatability at the wastewater treatment facility, pollution prevention activities, and other pertinent factors. The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the sanitary sewer shall not be exceeded without the approval of the Superintendent.

The Superintendent shall allow affected Industrial Users reasonable time to comply with any changes to the local limits. The conditions and schedule for compliance shall accompany the written notification of amended local limits.

2.8 Dilution

No User shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable Pretreatment Standard or requirement. The Superintendent may impose mass limitations on Users who are using dilution to meet applicable Pretreatment Standards or requirements or, in other cases when the imposition of mass limitations is appropriate.

2.9 Mass Based Limitations

Users implementing process changes may request that site specific local limit compliance be determined based on mass limitations in lieu of concentration limitations. Such mass based local limits will be calculated from the permitted concentration based limitations and flows, and shall be equivalent to or less than the mass discharge in effect at the time of the request. The intent of a mass based limit is to encourage and allow pollution prevention and/or water conservation measures that might cause a facility to increase pollutant concentrations in its discharge even though the total mass of the pollutant discharged does not increase, and may in fact decrease. Decisions on granting requests for mass based local limit compliance will be based on User specific information and current operating conditions of the POTW, and will be at the discretion of the Superintendent. Implementation of mass based limitations may not contravene any requirements of local requirements or Federal or State laws and/or regulations implemented thereunder, and may not waive applicable categorical Pretreatment Standards.

2.10 Assessment of Sewer Fees

A minimum annual sewer use fee, the quantity of cubic feet included in the minimum annual use fee and the cost per cubic foot of usage over the minimum use quantity (collectively referred to as the “sewer rates”) will be set annually by the Selectboard. Once all of the water meter readings have been received and processed by the Town staff (typically in April or May of each year) the Selectboard shall hold a public hearing to set the sewer rate for the next billing cycle.

The sewer rate is assessed according to the number of water meters read by the Water District for the building served by town sewer. Customers that remove a water meter for the purpose of avoiding a sewer fee assessment will be assessed the minimum fee as if the meter were in place. Properties that have a single building with more than one meter may reduce the number of meters to avoid the number of minimum fees assessed to the building.

2.11 Sewer Use Billing

The winter quarter months water meter readings will be used for sewer billing purposes. By using the winter quarter water readings, the water typically used for gardening, vehicle washing, etc., that does not enter the Town sewer system, is not included in the sewer billing calculations. The Town will obtain the winter quarter water usage quantities for each customer and multiply the quantity used by four (4) to arrive at an annual usage for billing purposes. Because this method of determining water usage may not be an equitable means of assessing sewer fees for all, customers may notify the Town of Jay if they believe they may qualify for one of the sewer billing “Special Circumstances” outlined in “Exhibit A” of the Sewer Use Ordinance. Such notification should be presented to the Town before May 1st of each year. Once notification is timely received and

determined by the Town staff to be justified, the Town will calculate the annual sewer fee accordingly. If the Town is already aware of a customer's "Special Circumstance", Town staff may refer to Exhibit A for guidance in assessing the appropriate sewer fee. If a customer believes that they have a water usage scenario that is not covered by the special circumstances listed in Exhibit A, they may request the Selectboard to allow/accept their water usage circumstance and determine an equitable sewer fee at a regular meeting of the Selectboard. As a matter of continuity, if the Selectboard allows/accepts a new special circumstance, the new circumstance will be added to, and made part of, the Special Circumstances in Exhibit A so that, as similar instances arise in the future, they will be dealt with in the same manner.

Exhibit A of the Sewer Use Ordinance shall be considered a separate administrative policy and not part of the Sewer Use Ordinance requiring acceptance at Town Meeting. Exhibit A may be amended by a majority vote of the Town of Jay Selectboard. The intent of Exhibit A is to provide guidance to Town staff in determining appropriate sewer fees for customers with unique water usage scenarios.

2.12 Sewer Fee Abatements

If an error or mistake is made in the assessment of sewer fees, or if a correction in billing circumstance is warranted, or if the winter quarter water usage is more than 20% higher than the average of the previous 3 quarters' usage, the Selectboard may act either upon a written application filed within 185 days from commitment stating the grounds for an abatement or on the initiative of the town staff within one year from commitment. The Selectboard may make such reasonable abatements as they consider proper to correct any illegality, error or irregularity in the assessment of sewer fees according to the Assessment of Sewer Fees and Sewer Use Billing outlined in Sections 2.10 and 2.11 above. For an abatement to be approved, a majority vote of the Selectboard at an official meeting of the Selectboard is required.

SECTION 3 - PRETREATMENT OF WASTEWATER

3.1 Pretreatment Facilities

Users shall provide wastewater treatment as necessary to comply with this Ordinance and shall achieve compliance with all categorical Pretreatment Standards, local limits, prohibitions, and requirements set out in Sections 2.3, 2.4, 2.5, and 2.6 of this Ordinance within the time limitations specified by EPA, the State, or the Superintendent, whichever is more stringent. All facilities required to achieve and maintain compliance shall be provided, operated, and maintained at the User's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Superintendent for review, and shall be acceptable to the Superintendent and the DEP before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the User from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the Town under the provisions of this Ordinance.

3.2 Additional Pretreatment Measures

A. Whenever deemed necessary to protect the POTW and determine the User's compliance with the requirements of this Ordinance, the Superintendent may require Users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary.

B. The Superintendent may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow control facility to ensure equalization of flow. An Industrial Discharge Permit may be issued solely for flow equalization.

C. Grease, oil, and sand interceptors shall be provided at the owner's expense when, in the opinion of the Superintendent, these devices are necessary for the preliminary treatment of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential Users. All interception units shall be of a type and capacity approved by the Superintendent and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the User at their expense. The User shall be responsible for the proper removal and disposal by appropriate means of the captured materials and shall maintain records of the dates and means of disposal, which shall be subject to periodic review by the Superintendent. Any removal and hauling of the collected materials shall be performed by licensed waste disposal firms.

D. Users with the potential to discharge flammable substances may be required to install and maintain an approved and calibrated combustible gas detection meter and alarm. The User shall be responsible for the proper calibration and operation and shall maintain calibration and test records, which shall be subject to periodic review by the Superintendent.

E. Where pretreatment or flow equalizing facilities are provided or required for any wastewaters or wastes, these devices shall be maintained continuously to ensure satisfactory and effective operation by the User at their expense. Such facilities shall be maintained, operated, inspected and repaired regularly, as needed, by the User at their expense. The User shall be responsible for the proper removal and disposal by appropriate means of the sludge materials that may buildup and shall maintain records of the dates and means of disposal, which shall be subject to periodic review by the Superintendent. Any removal and hauling of the collected sludge materials shall be performed by currently licensed waste disposal firms.

3.3 Slug Discharge Management Plan

The Superintendent shall evaluate whether each significant Industrial User needs a Slug Discharge Management Plan or other action to control Slug Discharges. The Superintendent may require any User to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control Slug Discharges. Alternatively, the Superintendent may develop such a plan for any User.

A Slug Discharge Management Plan must include sufficient general information to enable the POTW to: categorize and restrict the significant Industrial User potential for a slug discharge; and respond promptly and effectively in an emergency. In general, a Slug Discharge Management Plan shall address, at a minimum the following:

- A. General information - significant Industrial User name, address, contact person, a brief description of the significant Industrial User and applicable Pretreatment Standards;
- B. Facility Layout Flow (process, material loading/unloading areas, sanitary sewer, stormwater systems, etc) Diagrams, process description(s) and flows and loads;
- C. Description of process discharge practices, including non-routine batch discharges;
- D. Description of stored chemicals and wastes and material inventory;
- E. Spill and leak prevention equipment and procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, etc;
- F. Measures and equipment for emergency response and procedures for immediately notifying the Superintendent of any accidental or slug discharge, as required by Section 6.6 of this Ordinance;
- G. Slug reporting procedures and a description of previous slugs and corrective actions; and
- H. Worker Training Program.

3.4 Pollution Prevention Plan

In accordance with the provisions of Sections 2.6.B and 9.3 of this Ordinance, the Superintendent may require any User discharging wastes into the POTW to develop and implement, at that User's own expense, a pollution prevention plan. The Superintendent may require Users to submit as part of the pollution prevention plan information that demonstrates adherence to the following elements:

- A. Management Support. For changes to be effective, the visible support of top management is required. Management's support should be explicitly stated and include designation of a pollution prevention coordinator, goals, and time frames for reductions in volume and toxicity of waste streams, and procedures for employee training and involvement.
- B. Process Characterization. A detailed process waste diagram shall be developed that identifies and characterizes the input of raw materials, the outflow of products, and the generation of wastes.

C. Waste Assessment. Estimates shall be developed for the amount of wastes generated by each process. This may include establishing and maintaining waste accounting systems to track sources, the rates and dates of generation, and the presence of hazardous constituents.

D. Analysis of Waste Management Economics. Waste management economic returns shall be determined based on the consideration of:

1. Reduced raw material purchases;
2. Avoidance of waste treatment, monitoring and disposal costs;
3. Reductions in operations and maintenance expenses;
4. Elimination of permitting fees and compliance costs; and
5. Reduced liabilities for employee/public exposure to hazardous chemicals and cleanup of waste disposal sites,

E. Development of Pollution Prevention Alternatives. Current and past pollution prevention activities should be assessed, including estimates of the reduction in the amount and toxicity of waste achieved by the identified actions. Opportunities for pollution prevention must then be assessed for identified processes where raw materials become or generate wastes. Technical information on pollution prevention should be solicited and exchanged, both from inside the organization and out.

F. Evaluation and Implementation. Technically and economically feasible pollution prevention opportunities shall be identified and an implementation timetable with interim and final milestones shall be developed. The recommendations that are implemented shall be periodically reviewed for effectiveness.

The review and approval of such pollution prevention plans by the Town shall in no way relieve the User from the responsibilities of modifying facilities as necessary to produce a discharge acceptable to the Town in accordance with the provisions of this Ordinance.

3.5 Hauled Wastewater

A. Wastewater and Septic tank waste may be introduced into the POTW only at locations designated by the Superintendent, and at such times as are established by the Superintendent. Such waste shall not violate Section 2.3 of this Ordinance or any other requirements established by the Town. The discharge license for the North Jay POTW prohibits the acceptance of hauled wastewater.

B. The Superintendent may prohibit the disposal of hauled industrial wastewater. The discharge of hauled industrial wastewater, if allowed, is subject to all other requirements of this Ordinance.

C. No load may be discharged without prior consent of the Superintendent or his representative. The Superintendent or his representative may collect samples of each hauled

load to ensure compliance with applicable Standards. The Superintendent or his representative may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

D. Waste haulers must provide a wastetracking form for every load. This form shall include, at a minimum, the name and address of the waste hauler, applicable permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents.

SECTION 4 - INDUSTRIAL AND GENERAL DISCHARGE PERMIT APPLICATION

4.1 Wastewater Characterization

When requested by the Superintendent, a User must submit information on the nature and characteristics of its wastewater within sixty (60) days of the request. The Superintendent is authorized to prepare a form for this purpose and may periodically require Users to update this information.

4.2 Industrial Permit Requirement

A. No Significant Industrial User shall discharge wastewater into the POTW without first obtaining an Industrial Discharge Permit from the Superintendent, except that a significant Industrial User that has filed a timely and complete application pursuant to Section 4.4 of this Ordinance may continue to discharge for the time period specified therein.

B. The Superintendent may require other Users to obtain Industrial Discharge Permits, or submit an application for an Industrial Discharge Permit, as necessary to execute the purposes of this Ordinance.

C. Any violation of the terms and conditions of an Industrial Discharge Permit shall be deemed a violation of this Ordinance and shall subject the Industrial Discharge Permittee to the enforcement actions set out in Sections 9 through 11 of this Ordinance. Obtaining an Industrial Discharge Permit does not relieve a permittee of its obligation to comply with all federal and State Pretreatment Standards or requirements or with any other requirements of federal, State, and local law.

4.3 Industrial Discharge Permitting: Existing Connections

Any User required to obtain an Industrial Discharge Permit who was discharging wastewater into the POTW prior to the effective date of this Ordinance, and is not currently covered by a valid Industrial Discharge Permit, and who wishes to continue such discharges in the future, shall, within sixty (60) days after said date, apply to the Superintendent for an Industrial Discharge Permit in accordance with Section 4.6 of this Ordinance, and shall not cause or allow discharges to the POTW to continue after one hundred twenty (120) days of the effective date of this Ordinance except in accordance with an Industrial Discharge Permit issued by the Superintendent.

4.4 Industrial Discharge Permitting: New Connections

Any User required to obtain an Industrial Discharge Permit who proposes to begin or recommence discharging into the POTW shall obtain an Industrial Discharge Permit prior to the beginning or recommencing of such discharge. An application for this Industrial Discharge Permit, in accordance with Section 4.6 of this Ordinance, shall be filed at least ninety (90) days prior to the date upon which any discharge may begin or recommence.

4.5 Industrial Discharge Permitting: Categorical Standards

Within 120 days subsequent to the effective date of a Categorical Pretreatment Standard, an Industrial User subject to such standards shall submit an application for an Industrial Discharge Permit amendment. The application shall contain the information noted under Section 4.6.

4.6 Industrial Discharge Permit Application Content

All Users required to obtain an Industrial Discharge Permit, and other Users subject to these rules, as required by the Superintendent, shall submit a permit application. The Superintendent may require all Users to complete and submit a permit application consisting of the following information:

- A. All information required by Section 6.1.B of this Ordinance and as outlined below.
- B. Identifying Information;
 - 1. The name and address of the facility, including the name of the operator and owner.
 - 2. Contact information, description of activities, facilities, and plant production processes on the premises.
- C. Environmental Permits. A list of any environmental control permits issued under any law or rule implemented by local ordinance, EPA or DEP that are held or are required by law to be held by or for the facility;
- D. Description of Operations and Activities;
 - 1. Description of activities, facilities and production processes on the premises. A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such User. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.
 - 2. The estimated average, maximum and total daily flow for each discharge and the time and duration of discharge.
 - 3. Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW.
 - 4. Number and type of employees, hours of operation, and proposed or actual hours of operation.
 - 5. Type and amount of raw materials processed (average and maximum per day).

6. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge.

E. Time and duration of discharges;

F. The location for monitoring all wastes covered by the permit;

G. Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e);

H. Measurement of Pollutants;

1. The Categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources.

2. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the Standard or by the Superintendent, of regulated pollutants in the discharge from each regulated process.

3. Instantaneous, Daily Maximum, and long-term average concentrations, or mass, where required, shall be reported.

4. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 6.12 of this ordinance. Where the Standard requires compliance with BMP or pollution prevention alternative, the User shall submit documentation as required by the Superintendent or the applicable Standards to determine compliance with the Standard.

5. Sampling must be performed in accordance with procedures set out in Section 6.11 of this ordinance.

I. Copies of existing pollution prevention plans and/or a description of all known pollution prevention opportunities that may exist at the facility;

J. Notification to the Superintendent of any proposed or existing discharge of listed or characteristic hazardous waste as required by 40 CFR 403.12(p);

K. In those instances in which the Industrial User provides notification of the discharge of hazardous waste, the Industrial User shall also provide the following certification: "I certify that (the company) has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree (the company) has determined to be economically practicable";

L. An indication of whether the conditions referenced in the application are existing or proposed; and

M. Any other information as may be deemed necessary by the Superintendent to evaluate the Industrial Discharge Permit application. Incomplete or inaccurate applications will not be processed and will be returned to the User for revision.

4.7 Signatories and Certification

A. All Industrial Discharge Permit applications, User reports and certification statements shall be signed by an authorized representative of the User and contain the certification statement in Section 6.15.A.

B. If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to the Superintendent prior to or together with any reports to be signed by an Authorized Representative.

4.8 Hauled Wastewater Permits

Wastewater and septic tank waste may be introduced into the POTW only at locations designated by the Superintendent or his representative, and at such times as are established by the Superintendent or his representative. Transport and discharge of such waste shall comply with Section 2.3.B.8 and 3.5 of this Ordinance.

SECTION 5 - INDUSTRIAL DISCHARGE PERMIT ISSUANCE PROCESS

5.1 Industrial Discharge Permit Decisions

The Superintendent will evaluate the data provided by the Industrial User and may require additional information. Within ninety (90) days of receipt of a complete Industrial Discharge Permit application, the Superintendent will determine whether or not to issue an Industrial Discharge Permit. The Superintendent may deny any application for an Industrial Discharge Permit, with just cause.

5.2 Industrial Discharge Permit Duration

An Industrial Discharge Permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. An Industrial Discharge Permit may be issued for a period less than these intervals at the discretion of the Superintendent. Each Industrial Discharge Permit will indicate a specific date upon which it will expire.

Industrial Discharge Permits shall be terminated upon cessation of operations or transfer of business ownership, unless notification of such transfer is provided in accordance with Section 5.6 of this Ordinance. All Industrial Discharge Permits issued to a particular User are void upon the issuance of a new Industrial Discharge Permit to that User.

5.3 Industrial Discharge Permit Contents

An Industrial Discharge Permit shall include such conditions as are deemed reasonably necessary by the Superintendent to prevent Pass Through or Interference, protect the quality of the water body receiving the treatment facility's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

A. Industrial Discharge Permits shall contain:

1. A statement that indicates Industrial Discharge Permit issuance date, expiration date, effective date, and duration, which in no event shall exceed five (5) years;
2. A statement that the Industrial Discharge Permit is nontransferable without prior notification to the Town in accordance with Section 5.6 of this Ordinance, and provisions for providing the new owner or operator with a copy of the existing Industrial Discharge Permit;
3. Effluent limitations, including Best Management Practices, based on applicable general and categorical Pretreatment Standards, local limits and State and local requirements;
4. Self monitoring, sampling, reporting, notification, and recordkeeping requirements. These requirements shall include an identification of pollutants requiring pollution prevention reports and pollutants (or Best Management Practices) to be monitored, sampling location, sampling frequency, and sample type based on the applicable general pretreatment standards, local limits, this Ordinance, and State and Federal laws, rules and regulations;

5. The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 6.4.B.
6. For Users with reporting requirements, such reports at a minimum shall require:
 - a. Periodic monitoring results indicating the nature and concentration and mass loading of pollutants in the discharge from the regulated processes governed by pretreatment requirements and the average and maximum daily flow for these process units;
 - b. A statement as to whether the applicable Pretreatment Standards and requirements are being met on a consistent basis and, if not, than what additional operation and maintenance practices and/or pretreatment systems are necessary; and
 - c. Submittal of any monitoring results performed in addition to the requirements of the Industrial Discharge Permit using procedures prescribed in the Permit.
7. A description of identified pollution prevention opportunities at the facility;
8. A statement of applicable civil and criminal penalties for violation of Pretreatment Standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by this Ordinance, applicable State and federal laws, rules and regulations; and
9. Requirements to control Slug Discharge, if determined by the Superintendent to be necessary.

B. Industrial Discharge Permits may contain, but need not be limited to, the following conditions:

1. Limitations on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
2. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the POTW;
3. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges;
4. Development and implementation of pollution prevention plans to reduce the amount of pollutants discharged to the POTW;
5. The unit charge or schedule of User charges and fees for the management of the wastewater discharged to the POTW;

6. Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;
7. A statement that compliance with the Industrial Discharge Permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those that become effective during the term of the Industrial Discharge Permit; and
8. Other conditions as deemed appropriate by the Superintendent to ensure compliance with this Ordinance.

C. The Permit identifies the specific responsibilities of the Industrial User and provides the Town a means to track and regulate Industrial User. The Town has developed the following minimum Permit items to serve this purpose and communicate the responsibilities of the Industrial User to each applicant:

1. Permittee name and location address.
2. Effective and expiration dates of Permit, not to exceed a 5year term and renewal requirement.
3. Location and numbering of discharge(s) points to POTW and identify effluent limitations and monitoring responsibilities for each.
4. Effluent limitations - categorical and/or local limits.
5. Discharge prohibitions - includes those from the Ordinance and specific prohibitions according to the user's process.
6. Monitoring and reporting requirements.
7. Notification of Clean Water Act requirements.
8. Notification to Town and/or POTW if:
 - ξ Any discharge occurs that could cause a problem to the POTW including Slug Discharges;
 - ξ Sampling denotes a violation;
 - ξ Volume or characteristic of discharge is to change;
 - ξ Hazardous waste in any amount is discharged to the POTW;
 - ξ Upset or unanticipated bypass occurs or anticipated bypass is expected;
 - ξ Any discharge causes or could cause danger to the public or environment; and
 - ξ Permitted facility or activity is to change.
9. Standard conditions and requirements include the following:
 - ξ Compliance with federal, State, and local regulations and the Permit (whichever is more stringent will apply);
 - ξ Use of approved methods only to meet self-monitoring requirements;

- § Data retention, a minimum of 3 years or longer if litigation occurs;
- § Making any and all records required by Program available for inspection and copying by Town;
- § Signature requirements for reporting and signatory page for authorized signatory;
- § No dilution allowed to meet effluent requirements;
- § Permitted user not exempt from requirements of other agencies and authorities;
- § Pre-approval by Town and DEP for construction of facilities required for collection, treatment, or discharge of any pollutant;
- § Maintenance in good working order and efficient operation of any facility necessary to meet Permit requirements;
- § It is not a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the Permit;
- § Taking all reasonable steps to minimize or prevent any discharge that could cause danger to the public, environment, or POTW;
- § Disposal of solids, sludges, filter backwash, or other pollutants and hazardous wastes according to approved methods and in approved locations;
- § Installation of facilities required for sampling and monitoring;
- § Allowing inspection and monitoring by Town;
- § No transfer or reassignment of Permit;
- § Providing any information requested by Control Authority for evaluation of Permit, compliance or noncompliance status, or discharge characteristics;
- § Any other conditions or requirements of the Permit, the Ordinance, or the Program that the Industrial User needs to know to achieve compliance; and
- § Laboratory QA/QC reports to assure the accuracy of all data.

10. Notification of penalty for noncompliance.

11. Notification of penalty for falsification of information or tampering.

12. Expected date for compliance with effluent limitations.

5.4 Industrial Discharge Permit Appeals

Any person, including the User, may petition the Superintendent to reconsider the terms of an Industrial Discharge Permit within thirty (30) days of its issuance.

A. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

B. In its petition, the appellant User must indicate the Industrial Discharge Permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the Industrial Discharge Permit.

C. The conditions set forth within the Industrial Discharge Permit shall not be stayed pending the appeal.

D. If the Superintendent fails to act within thirty (30) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider an individual wastewater discharge permit, not to issue an individual wastewater discharge permit, or not to modify an individual wastewater discharge permit shall be considered final administrative actions for purposes of judicial review.

E. Aggrieved parties may appeal the conditions of the Industrial Discharge Permit in accordance with Section 14.2 of this Ordinance.

5.5 Industrial Discharge Permit Modification

The Superintendent may modify an Industrial Discharge Permit for good cause, including, but not limited to, the following reasons:

- A. To incorporate any new or revised Federal, State, or local Pretreatment Standards or requirements;
- B. To address significant alterations or additions to the User's operation, processes, or wastewater volume or character since the time of Industrial Discharge Permit issuance;
- C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- D. Information indicating that the permitted discharge poses a threat to the Town's POTW, Town personnel, or the water quality in the receiving waters;
- E. Violation of any terms or conditions of the Industrial Discharge Permit;
- F. Misrepresentations or failure to fully disclose all relevant facts in the Industrial Discharge Permit application or in any required reporting;
- G. Revision of or a grant of variance from categorical Pretreatment Standards pursuant to 40 CFR 403.13;
- H. To correct typographical or other errors in the Industrial Discharge Permit; or
- I. To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with Section 5.6 of the Ordinance.

The User will be informed of any modifications in the Permit at least 30 days prior to the effective date of change and shall be allowed a reasonable time schedule for compliance, as determined by the Town.

5.6 Industrial Discharge Permit Transfer

Industrial Discharge Permits may be transferred to a new owner or operator only if the permittee provides at least sixty (60) days advance notice to the Superintendent, and the Superintendent

approves the Industrial Discharge Permit transfer. The notice to the Superintendent shall include a written certification by the new owner or operator that:

- A. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes that generate wastewater to be discharged to the POTW;
- B. Identifies the specific date on which the transfer is to occur; and
- C. Acknowledges full responsibility for complying with the existing Industrial Discharge Permit.

Failure to provide advance notice of a transfer shall render the Industrial Discharge Permit void as of the date of facility transfer.

5.7 Industrial Discharge Permit Reissuance

A User with an expiring Industrial Discharge Permit shall apply for reissuance of the Industrial Discharge Permit by submitting a complete permit application, in accordance with Section 4.6 of this Ordinance, a minimum of one hundred and eight (180) days prior to the expiration of the User's existing Industrial Discharge Permit. Under no circumstances shall the permittee continue to discharge without an effective permit. An expired permit will continue to be effective and enforceable until the permit is reissued if:

- A. The Industrial User has submitted a complete permit application at least one hundred and eighty (180) days prior to the expiration date of the User's existing permit; and
- B. The failure to reissue the permit, prior to expiration of the previous permit, is not due to any act or failure to act on the part of the Industrial User.

5.8 Regulation of Waste Received from Other Jurisdictions

A. If another municipality, or User located within another municipality, contributes wastewater to the POTW, the Superintendent shall enter into an intermunicipal agreement with the contributing municipality.

B. Prior to entering into an agreement required by paragraph A, above, the Superintendent shall request the following minimum information from the contributing municipality:

1. A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;
2. An inventory of all Users located within the contributing municipality that are discharging to the POTW; and
3. Such other information as the Superintendent may deem necessary.

C. An intermunicipal agreement, as required by paragraph A, above, shall contain the following conditions:

1. A requirement for the contributing municipality to adopt a sewer use ordinance that is at least as stringent as this Ordinance, and local limits including required Baseline Monitoring Reports (Section 6.1) which are at least as stringent as those set out in Section 2.6 of this Ordinance to ensure that the pollutant loadings allocated to the contributing municipality are not exceeded. The requirement shall specify that such Ordinance and local limits shall be revised as necessary to reflect changes made to the Town's Ordinance or revisions to the loadings allocated to the contributing municipality;
2. A requirement for the contributing municipality to submit a revised User inventory on at least an annual basis;
3. A provision specifying which pretreatment implementation activities, including Industrial Discharge Permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the Superintendent; and which of these activities will be conducted jointly by the contributing municipality and the Superintendent;
4. A requirement for the contributing municipality to provide the Superintendent with access to all information that the contributing municipality obtains as part of its pretreatment activities;
5. Limitations on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;
6. Requirements for monitoring the contributing municipality's discharge;
7. A provision ensuring the Superintendent's access to the facilities of Users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the Superintendent; and
8. A provision specifying remedies available for breach of the terms contained within the agreement.

SECTION 6 - REPORTING REQUIREMENTS

6.1 Baseline Monitoring Reports

A. Within either one hundred eighty (180) days subsequent to the effective date of either a categorical Pretreatment Standard, or the final administrative decision on a category determination under 40 CFR 403.6.a(4), whichever is later, existing categorical Users currently discharging to, or scheduled to discharge to the POTW, shall submit to the Superintendent a report that contains the information listed in paragraph B, below. At least ninety (90) days prior to commencement of discharge, new sources, and sources that become categorical Users subsequent to the promulgation of an applicable categorical standard, shall submit to the Superintendent a report that contains the information listed in paragraph B, below. If necessary, a new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall provide estimates of its anticipated flow and quantity of pollutants to be discharged.

B. Users described above shall submit the information set forth below:

1. All information required in Section 4.7.A and 4.7.B;
2. Measurement of Pollutants;
 - a. The User shall provide the information required in Section 4.7.A and 4.7.B;
 - b. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph;
 - c. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined waste stream formula in 40 CFR 403.6.e to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6.e this adjusted limit along with supporting data shall be submitted to the Control Authority;
 - d. Sampling and analysis shall be performed in accordance with Section 6.11 and 6.12;
 - e. The Superintendent may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures; and
 - f. The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW.

3. Compliance Certification. A statement, reviewed by the User's authorized representative and certified by a qualified professional, indicating whether the applicable Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment systems are required to attain consistent compliance with the Pretreatment Standards and requirements;

4. Compliance Schedule. If additional pretreatment and/or O&M is required to meet the Pretreatment Standards, the schedule by which the User will provide such additional pretreatment and/or O&M shall not be later than the compliance date established for the applicable Pretreatment Standard. A compliance schedule pursuant to this section shall meet the requirements specified in Section 6.2 of this Ordinance; and

5. Signature and Report Certification. All baseline monitoring reports shall be signed and certified in accordance with Section 6.15 of this Ordinance.

6.2 Compliance Schedules/Progress Reports

The following conditions shall apply to the compliance schedules required by Sections 6.1.B.4 and 9.2 of this Ordinance:

A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable Pretreatment Standards, including, but not limited to, retaining an engineer, completing preliminary and final design plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation;

B. No increment referred to in 6.2.A shall exceed three (3) months and total compliance schedule shall not exceed six (6) months;

C. The User shall submit a progress report to the Superintendent no later than fourteen (14) days following each date in the schedule and the final date of compliance which identifies, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the action being taken by the User to return to the established schedule; and

D. In no event shall more than three (3) months elapse between such progress reports to the Superintendent.

6.3 Reports on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (90) days following the date for final compliance with applicable categorical Pretreatment Standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any User subject to such Pretreatment Standards and requirements shall submit to the Superintendent a report containing the information described in Sections 4.7.A, 4.7.B and 6.1.B.2 of this Ordinance. For Users subject to equivalent mass or concentration limitations established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the User's long-term production rate. For all other

Users subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period. All compliance reports shall be signed and certified in accordance with Section 6.15.A of this Ordinance. All sampling will be done in conformance with Section 6.12.

6.4 Periodic Compliance Reports

A. Except as specified in Section 6.4.C, all Significant Industrial Users shall, at a frequency determined by the Superintendent but in no case less than twice per year (June and December, or on dates specified), submit a report indicating the nature and concentration of pollutants in the discharge that are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the Superintendent or the Pretreatment Standard necessary to determine the compliance status of the User.

B. The Town may authorize an Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:

1. The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater;
2. The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit;
3. In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least two 24-hour composite samplings of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. The Superintendent will determine whether the samples shall be flow composites or load composites;
4. The request for a monitoring waiver must be signed in accordance with Section 1.4.C, and include the certification statement in 6.15.B;
5. Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis;

6. Any grant of the monitoring waiver by the Superintendent must be included as a condition in the User's permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the Superintendent for 3 years after expiration of the waiver;

7. Upon approval of the monitoring waiver and revision of the User's permit by the Superintendent, the Industrial User must certify on each report with the statement in Section 6.15.B below, that there has been no increase in the pollutant in its waste stream due to activities of the Industrial User;

8. In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the User's operations, the User must immediately: Comply with the monitoring requirements of Section 6.4.A, or other more frequent monitoring requirements imposed by the Superintendent, and notify the Superintendent; and

9. This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard;

C. The Town may reduce the requirement for periodic compliance reports (see Section 6.4), to a requirement to report no less frequently than once a year, unless required more frequently in the Pretreatment Standard or by the EPA/DEP, where the Industrial User's total categorical wastewater flow does not exceed any of the following:

1. The POTW's value for 0.01 percent of the POTW's design dry-weather hydraulic capacity of the POTW, or five thousand (5,000) gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the Industrial User discharges in batches]

2. The POTW's value for 0.01 percent of the design dry-weather organic treatment capacity of the POTW; and

3. The POTW's value for 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical Pretreatment Standard for which approved Local Limits were developed in accordance with Section 2.6 of this Ordinance.

Reduced reporting is not available to Industrial Users that have in the last two (2) years been in Significant Noncompliance, as defined in Section 1.4 of this ordinance. In addition, reduced reporting is not available to an Industrial User with daily flow rates, production levels, or pollutant levels that vary so significantly that, in the opinion of the Superintendent, decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period.

D. All periodic compliance reports must be signed and certified in accordance with Section 6.15.A of this Ordinance.

E. All wastewater samples must be representative of the User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to maintain its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.

F. If a User subject to the reporting requirement in this section monitors any pollutant more frequently than required by the Superintendent, using the procedures prescribed in Sections 6.11 and 6.12 of this Ordinance, the results of this monitoring shall be included in the report.

6.5 Reports of Changed Conditions

Each Industrial User shall notify the Superintendent of any planned significant changes to the User's operations or system that might alter the nature, quality, or volume of its wastewater at least ninety (90) days before the change.

A. The Superintendent may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submittal of an Industrial Discharge Permit application under Section 4 of this Ordinance.

B. The Superintendent may issue an Industrial Discharge Permit under Section 5 of this Ordinance or modify an existing Industrial Discharge Permit under Section 5.5 of this Ordinance in response to changed conditions or anticipated changed conditions.

6.6 Reports of Slug/Potentially Adverse Discharges

A. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load, that may cause adverse impacts to the POTW, the User shall immediately telephone and notify the Superintendent of the incident. This notification shall include identifying the location of the discharge, type of waste, concentration and volume, if known, and corrective actions conducted by the User.

B. Within five (5) days following such discharge, the User shall, unless waived by the Superintendent, submit a detailed written report describing the cause(s) of the discharge and the measures to be conducted by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability that may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability that may be imposed pursuant to this Ordinance.

C. A notice shall be permanently posted on the User's employee bulletin board or other prominent place advising employees whom to call in the event of a discharge described in paragraph A, above. Employers shall ensure that all employees who may cause such a discharge to occur or who may be present when a discharge occurs are advised of the emergency notification procedure.

D. Significant Industrial Users are required to notify the Superintendent immediately of any changes at its facility affecting the potential for a Slug Discharge.

6.7 Reports from Unpermitted Users

All Users not required to obtain an Industrial Discharge Permit shall provide appropriate reports to the Superintendent as the Superintendent may require.

6.8 Notice of Violation/Repeat Sampling and Reporting

If the results of sampling performed by a User indicate a violation, the User shall notify the Superintendent within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Superintendent within thirty (30) days subsequent to becoming aware of the violation. The User is not required to resample if the Superintendent monitors at the User's facility at least once a month, or if the Superintendent samples between the User's initial sampling and when the User receives the results of this sampling.

6.9 Notification of the Discharge of Hazardous Waste

A. In the case of any notification made under this section, the User shall certify that it has implemented a Pollution Prevention Plan as described in Section 3.4 of this Ordinance to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically and technologically practicable.

B. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Ordinance, a permit issued thereunder, or any applicable Federal and State laws and local rules and regulations.

6.10 Pollution Prevention Reports

Permitted Industrial Users discharging pollutants on the "local limits" or "pollution prevention action" lists of Section 3.4 of this Ordinance, at concentrations greater than background levels, shall report annually on pollution prevention activities undertaken to reduce or minimize the generation of wastes containing these pollutants.

6.11 Analytical Requirements

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA or DEP determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Superintendent or other parties approved by EPA or DEP.

6.12 Sample Collection

Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

A. Except as indicated in Section B and C below, the User must collect wastewater samples using 24hour flowproportional composite sampling techniques, unless timeproportional composite sampling or grab sampling is authorized by the Superintendent. Where timeproportional composite sampling or grab sampling is authorized by the Town, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Town, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits. A single grab sample may also be used in place of a composite sample with approval of the Superintendent when:

1. The effluent is not discharged on a continuous basis (i.e., batch discharges of short duration), and only when the batch exhibits homogeneous characteristics (i.e., completely mixed) and the pollutant can be safely assumed to be uniformly dispersed;
2. Sampling a facility where a statistical relationship can be established between previous grab samples and composite data; and
3. The waste conditions are relatively constant (i.e., are completely mixed and homogeneous) over the period of the discharge.

B. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

C. For sampling required in support of baseline monitoring and 90day compliance reports required in Section 6.1 and 6.3 (40 CFR 403.12(b) and (d)), a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Superintendent may authorize a lower minimum. For the reports required by Section 6.4 (40 CFR 403.12(e) and 403.12(h)), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements.

6.13 Date of Receipt of Reports

Written reports will be deemed to have been submitted on the date postmarked. For reports that are not mailed, the date of receipt of the report by the person designated in the Industrial (or General) Discharge Permit shall govern.

6.14 Record Keeping

Users subject to the reporting requirements of this Ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements and documentation associated with Best Management Practices established under Section 2.6.E. Records shall include the date, exact location, method, and time of sampling, and the name of the person(s) obtaining the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the User or the Town, or where the User has been specifically notified of a longer retention period by the Superintendent. Before destroying the records, the Industrial User shall request and receive permission from the Town.

6.15 Certification Statements

A. Certification of Permit Applications, User Reports and Initial Monitoring Waiver - The following certification statement is required to be signed and submitted by Users submitting permit applications in accordance with Section 4.7; Users submitting baseline monitoring reports under Section 6.1.B.5; Users submitting reports on compliance with the categorical Pretreatment Standard deadlines under Section 6.3; Users submitting periodic compliance reports required by Section 6.4. The following certification statement must be signed by an Authorized Representative as defined in Section 1.4.C:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

B. Certification of Pollutants Not Present - Users that have an approved monitoring waiver based on Section 6.4.B must certify on each report with the following statement that there has been no increase in the pollutant in its waste stream due to activities of the User.

"Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under Section 6.4.A."

SECTION 7 - POWERS AND AUTHORITIES OF INSPECTORS

7.1 Compliance Monitoring

The Superintendent or his designee may investigate instances of noncompliance with any requirement of this Ordinance, Permit, or Order. The Superintendent may, as necessary, sample and analyze the wastewater discharges of contributing Users and conduct surveillance and inspection activities to identify, independently of information supplied by such Users, occasional and continuing noncompliance with any requirement of this Ordinance. Each User may be billed directly for costs incurred for analysis of its wastewater and other costs of sampling, analysis and investigation.

7.2 Right of Entry: Inspection and Sampling

All Users discharging to the Town's POTW shall allow access by duly authorized representatives of the Town, bearing proper credentials, ("Inspector(s)") for the purpose of determining whether the User is complying with any requirement of this Ordinance, and any Industrial Discharge Permit or Order issued hereunder. Users shall allow the Inspector(s) ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any duties required by this Ordinance.

A. If a User has security measures in force that require proper identification and clearance before entry into its premises, the User shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Inspector(s) will be permitted to enter without delay for the purposes of performing specific responsibilities.

B. The Inspector(s) shall have the right to set up on the User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the User's operations.

C. The Inspector(s) may require the User to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated at least annually to ensure accuracy.

D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the User at the written or verbal request of the Inspector(s) and shall not be replaced. The costs of clearing such access shall be borne by the User.

E. Unreasonable delays in allowing the Inspector(s) access to the User's premises shall be a violation of this Ordinance.

F. The Inspector(s) is authorized to obtain information concerning industrial and/or commercial processes that have a bearing on the kind or source of discharge to the public sewer. The Industrial and/or Commercial User may request that the information in question not-be disclosed to the public in accordance with Section 8 of this Ordinance. The information

in question shall be made available upon written request to governmental agencies for uses related to this Ordinance, the MEPDES permit, or the pretreatment program. The burden of proof that information should be held confidential rests with the User.

G. While performing the necessary work on private properties referred to in this Section, the Inspector(s) shall observe all safety rules applicable to the premises established by the User. The User shall be held harmless for injury or death to the Inspector(s), and the Town shall indemnify the User against loss or damage to its property by Town employees and against liability claims and demands for personal injury or property damage asserted against the User and growing out of the monitoring activities, except as such may be caused by negligence or failure of the User to maintain safe conditions.

H. The Inspector(s) shall be permitted to enter all private properties through which the Town holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the POTW lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

I. The Superintendent and other duly employees of the Town bearing proper credentials and identification shall inspect the premises of any consumer for leakage or other wastes of metered water upon the request of the consumer. Such a request may be required in writing by the Town. The Town shall not be held liable for any condition that may prevail or exist that is discovered by inspection of the Town.

7.3 Search Warrants

If the Superintendent has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the Town designed to verify compliance with this Ordinance or any permit or Order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Superintendent may seek issuance of a search warrant from the Franklin County District Court. The Superintendent may also require that the User stop discharging all wastewater until a search warrant is obtained.

SECTION 8 - CONFIDENTIAL INFORMATION/PUBLIC PARTICIPATION

8.1 Confidential Information

Information and data on a User obtained from reports, surveys, Industrial Discharge Permit Applications, Industrial Discharge Permits, and monitoring programs, and from the Superintendent's inspection and sampling activities, shall be available to the public without restriction, unless the User specifically requests, and is able to demonstrate to the satisfaction of the Superintendent, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the User furnishing a report that such information should be held confidential, the portions of a report that might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the MEPDES program or pretreatment program, and in enforcement proceedings involving the person providing the report. Wastewater constituents and characteristics and other effluent data as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

8.2 Public Participation

The Town shall comply with the public participation requirements of 40 CFR Part 25 in the enforcement of industrial Pretreatment Standards and requirements.

SECTION 9 - ADMINISTRATIVE ENFORCEMENT REMEDIES

9.1 Notification of Violation

When the Superintendent determines that a User has violated any provision of this Ordinance, an Industrial Discharge Permit or Order issued hereunder, or any other Pretreatment Standard or requirement, the Superintendent may serve initially an informal 24 hour notification by phone call. The Superintendent fills out the Telephone Discussion/Site Visit Report form (refer to Exhibit C) for every phone call, site visit or discussion that is related to pretreatment and puts documentation in User's file.

A. Initial Notification of Violation - Possible reasons for the violations are discussed with the User during the User's 24 hour notification phone call. The User is encouraged to investigate the violation. Changes in process, chemical usage, and sampling techniques are discussed with the user. The Town suggests possible changes in sample handling procedures and also may suggest splitting the retest between two laboratories. The Town might require splitting the sample collected for retest, with the cost borne by the User. If the Town has received proper notification, and a retest is submitted to the Town within 30 days, no further action is required on the Town's part.

B. Repeat Violations - During the 24 hour notification phone call, the Superintendent asks if an investigation of the violation was performed by the User, and what steps are being used to ensure no reoccurrence.

C. Repeat Paperwork Violations - The Town initiates a phone call and/or sends a written Notification of Violation as required. During the phone call, the Superintendent discusses the reasons for the violation, and the Town's next enforcement options.

When the Superintendent determines that a User has violated, or continues to violate, any provision of this Ordinance, an Industrial Discharge Permit or Order issued hereunder, or any other Pretreatment Standard or requirement, the Superintendent will serve a written Notice of Violation (refer to Exhibit D) to the User on a standard form. Within the time period specified in the violation notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the User to the Superintendent. Submission of such a plan in no way relieves the User of liability for any violations occurring before or subsequent to receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Superintendent to take any action, including emergency actions or any other enforcement action, without initially issuing a Notice of Violation.

9.2 Compliance Schedule Development

The Superintendent may require any User that has violated or continues to violate any provision of this Ordinance, an Industrial Discharge Permit, or Order issued hereunder, or any other Pretreatment Standard or requirement, to develop a compliance schedule. A compliance schedule pursuant to this Section shall meet the requirements set out in Section 6.2 of this Ordinance. A compliance schedule pursuant to this section shall comply with the following conditions:

A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable Pretreatment Standard's including, but not limited to, retaining an engineer, completing preliminary and final design plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation;

B. No increment referred to above shall exceed six (6) months;

C. The User shall submit a progress report to the Superintendent no later than fourteen (14) days following each date in the schedule and the final date of compliance which identifies, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the action being taken by the User to return to the established schedule; and

D. In no event shall more than six (6) months elapse between such progress reports to the Superintendent.

9.3 Pollution Prevention Plan Development

The Superintendent may require any User that has violated or continues to violate any provision of this Ordinance, an Industrial Discharge Permit, or Order issued hereunder, or any other Pretreatment Standard or requirement, to develop a pollution prevention plan in accordance with Section 3.4 of this Ordinance. The pollution prevention plan must specifically address violation(s) for which this action was undertaken. The pollution prevention plan shall be developed using good engineering judgment and shall be submitted to the Superintendent no later than sixty (60) days after the User was notified of this requirement.

9.4 Publication of Users in Significant Noncompliance

The Superintendent may publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements.

9.5 Show Cause Order (SCO)

The Town Manager may issue a Show Cause Order to a User that has violated, or continues to violate, any provision of this Ordinance, an Industrial Discharge Permit or Order issued hereunder, or any other Pretreatment Standard or requirement. The SCO is an enforcement document that directs the Industrial User to undertake and/or cease specific activities by specified deadline. The SCO is the minimum level of enforcement used to address significant noncompliance.

A. The title of the SCO shall specify the type of Order being issued, to whom it is being issued, the purpose of the Order and be printed on Town of Jay letterhead.

B. Legal Authority - The SCO shall identify the authority under which the Order is issued.

C. Finding of Significant Noncompliance - All violations shall be described, including the date, the specific Permit or Ordinance provisions violated, and any damages attributable to the violation.

D. Ordered Activity - The SCO shall identify all ordered activities including installation of treatment technology, additional monitoring, appearance at a show cause hearing, termination of service, etc.

E. Dates for Corrective Actions - Where compliance schedules are used, all progress dates must be established including due dates for any required written reports.

F. Standard Clauses - Such as: Compliance with the terms and conditions of the SCO will not be construed to relieve the Industrial User of its obligation to comply with applicable Federal, State, or local law.

9.6 Show Cause Hearing Order

The Town Manager may issue via an Administrative Order a Show Cause Hearing Order to a User that has violated, or continues to violate, any provision of this Ordinance, an Industrial Discharge Permit or Order issued hereunder, or any other Pretreatment Standard or requirement, to appear before the Town Officials and show cause why the proposed enforcement action should not be taken. Notice shall be served on the User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action; and a request that the User show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the User. A show cause hearing shall not be a bar against, or prerequisite for, executing any other action against the User.

9.7 Cease and Desist Order

When the Town Manager determines that a User has violated, or continues to violate, any provision of this Ordinance, an Industrial Discharge Permit or Order issued hereunder, or any other Pretreatment Standard or requirement, or that the User's past violations are likely to recur, the Town Manager may issue a Cease and Desist Order to the User directing it to cease and desist all such violations and directing the User to:

- A. Immediately comply with all requirements; and
- B. Implement such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a Cease and Desist Order shall not be a bar against, or a prerequisite for, taking any other action against the User.

9.8 Consent Orders

The Town is hereby empowered to enter into Consent Order(s), assurances of voluntary compliance, or other similar documents establishing an agreement with any User responsible for noncompliance. Such Orders shall include specific action to be taken by the User to correct the noncompliance within a time period also specified by the Order. The Order(s) may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance including the installation of pretreatment systems, additional self-monitoring, and management practices. Such Orders shall have the same force and effect as Orders issued pursuant to Sections 9.5 and 9.6 of this Ordinance and shall be judicially enforceable.

9.9 Industrial Discharge Permit Termination

Any Industrial User who violates this Ordinance, terms and conditions of the wastewater discharge permit, Pretreatment Standard or requirement, Order, or any applicable State or Federal law, or the following conditions is subject to permit termination:

- A. Failure to notify and report to the Superintendent of significant changes in operations or wastewater constituents/characteristics within a reasonable time period prior to the changed discharge;
- B. Failure to provide prior notification to the Superintendent of changed conditions pursuant to Section 6.5 of this ordinance;
- C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- D. Falsifying selfmonitoring reports and certification statements;
- E. Tampering with monitoring equipment;
- F. Refusal of reasonable access to the User's facility premises to the Superintendent to allow timely inspection, monitoring, sampling or record review;
- G. Failure to meet effluent limitations;
- H. Failure to pay fines;
- I. Failure to pay sewer charges;
- J. Failure to meet compliance schedules;
- K. Failure to complete an Industrial Discharge permit application; or
- L. Failure to provide advance notice of the transfer of business ownership of a permitted facility.

Such User will be notified of the proposed termination of its discharge and will be offered an opportunity to show cause under Section 9.6 of this Ordinance why the proposed action should

not be taken. Exercise of this option by the Town shall not be a bar to, or a prerequisite for, taking any other action against the User.

9.10 Termination of Discharge

In addition to the provisions in Section 9.9 of this Ordinance, any User who violates the following conditions is subject to discharge termination:

- A. Violation of Industrial Discharge Permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- D. Refusal of reasonable access to the User's premises for the purpose of inspection, monitoring, or sampling; or
- E. Violation of the discharge standards in Section 2.3 of this Ordinance.

Such User will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 9.6 of this Ordinance why the proposed action should not be taken. Exercise of this option by the Superintendent shall not be a bar to, or a prerequisite for, taking any other action against the User.

9.11 Emergency Suspensions

The Town may immediately issue a Suspension Order to suspend a User's discharge, subsequent to informal notice to the User, whenever such suspension is necessary to terminate an actual or threatened discharge that reasonably appears to threaten or cause an imminent or substantial endangerment to the health or welfare of POTW personnel or the public. The Superintendent may also immediately suspend a User's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or that presents, or may present, an endangerment to the environment or causes the Town to violate any condition of its MEPDES permit.

- A. Any User notified of a suspension of its discharge shall immediately terminate or eliminate its wastewater discharge. In the event of a User's failure to immediately comply with the Suspension Order, the Superintendent may implement such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Superintendent may allow the User to recommence its discharge when the User has demonstrated to the satisfaction of the Town that the period of endangerment has passed, unless the termination proceedings in Sections 9.9 or 9.10 of this Ordinance are initiated against the User.
- B. A User that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed, written statement, describing the causes of the harmful

contribution and the measures implemented to prevent any future occurrence, to the Superintendent prior to the date of any show cause or termination hearing under Sections 9.6, 9.9 or 9.10 of this Ordinance.

Nothing in this Section shall be interpreted as requiring a hearing prior to any emergency suspension under this Section.

9.12. Administrative Fine (AF)

Any person or User who causes or contributes to any violation of this Ordinance may be liable to the Town for an administrative fine. The Selectmen will determine the amount of any fine on a case-by-case basis. The Selectmen have the authority to fine an amount up to \$10,000 per each offense. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. Administrative fines are an escalated enforcement response, particularly when Notices of Violations or Administrative Orders have not prompted a return to compliance. When determining the amount of any fine the Selectmen shall consider the following factors:

- A. The type and severity of the violation;
- B. The number of violations cited;
- C. The duration of noncompliance;
- D. The impact of the violation on the receiving water, sludge quality, POTW operation and/or the environment;
- E. Whether the violation threatened human health;
- F. Whether the User derived economic benefit or savings from the noncompliance;
- G. The compliance history of the User;
- H. Whether the User is making good faith efforts to restore compliance; and
- I. Any other relevant factors.

Administrative Fines are particularly appropriate when the User remains in noncompliance after receiving repeated Notice of Violations or when the User violates terms of an Administrative Order. Administrative Fines may be assessed in addition to and are not in lieu of the recovery of expenses.

9.13 Recovery of Expenses

Any person or User who causes or contributes to any violation of this Ordinance may be liable to the Town for any cost, expense, loss, compliance costs, fees, or damage to the Town of any kind or nature caused to the Town and any natural resource damages or penalties assessed by the State of Maine or federal agencies against the Town, by reason of such violation, including the Town's attorneys' fees and expert or consultant fees and interest. If the Superintendent or Town Officials

shall have caused the disconnection of a drain from a public sewer, the Town may collect the expenses associated with completing the disconnection from any person or, User who caused or contributes to such violation. The Town may thereafter refuse to permit the restoration of the former connection or of any new connection to the property concerned in the violation until the claim of the Town for the cost of completing such disconnection shall have been paid in full plus interest and the reasonable cost of any legal expenses incurred by the Town in connection therewith.

9.14 Harm to Town Property

No person shall maliciously, willfully, or negligently damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment that is part of the public sewerage system. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct pursuant to the local Ordinances, and shall also be subject to penalties under State and Federal statutes.

9.15 Property Liens

The Town may place a lien against any property on which there are unpaid charges, fees, fines, or any other costs related to the enforcement of this Ordinance in accordance with Title 30-A, Section 3406(2) of the Maine Revised Statutes Annotated. Delinquent sewer use accounts shall automatically be assessed the costs incidental to filing the appropriate lien certificates in the registry of deeds and charged interest at the same rate that may be charged for delinquent municipal taxes for the corresponding budget year. The lien provisions of Title 30-A, Section 3406 of the Maine Revised Statutes Annotated shall be applicable.

SECTION 10 - JUDICIAL ENFORCEMENT REMEDIES

10.1 Injunctive Relief

The Selectmen may determine that a User has violated or continues to violate any requirement of this Ordinance, an Industrial Discharge Permit, or Order issued hereunder, or any other Pretreatment Standard or requirement, and that such violation or continued violation threatens or is reasonably likely to threaten public health, the environment, or the proper functioning of the POTW and may direct the Town's attorney to petition the Franklin County Superior Court for the issuance of a temporary, preliminary, or permanent injunction, as appropriate. The Town may seek injunctive relief to restrain or compel the specific performance of the Industrial Discharge Permit, Order, or other requirement imposed by this Ordinance on activities of the User. The Town may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the User to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, implementing any other action against a User.

10.2 Damages and Fines

The Selectmen may determine that a User has violated or continues to violate any requirement of this Ordinance, an Industrial Discharge Permit, Order issued hereunder, or any other Pretreatment Standard or requirement. The Selectmen may direct the Town's attorney to file a claim for damages, to collect fines, or for other appropriate relief under Title 30-A of the Maine Revised Statutes or otherwise to enforce and carry out the requirements of this Ordinance.

The remedies available to the Town may include damages, fines, punitive damages, attorney's fees, court costs and other expenses of litigation, expenses associated with enforcement activities, including sampling and monitoring expenses, and interest. The amount of the fine shall be determined by the Court based on a balancing of the factors contained in Section 9.12 of this Ordinance.

10.3 Public Nuisances

A violation of any provision of this Ordinance, an Industrial Discharge Permit, or Order issued hereunder, or any other Pretreatment Standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the Superintendent.

10.4 Nonexclusive Remedies

The remedies provided for in this Ordinance are not exclusive. The Town may take any, all, or any combination of these actions against a noncompliant User. Further, the Town is empowered to pursue more than one enforcement action against any noncompliant User.

SECTION 11 - SUPPLEMENTAL ENFORCEMENT ACTION

11.1 Performance Bonds

The Town may decline to issue or reissue an Industrial Discharge Permit to any User who has failed to comply with any provision of this Ordinance, a previous Industrial Discharge Permit, or Order issued hereunder, or any other Pretreatment Standard or requirement, unless such User first files a satisfactory bond, payable to the Town, in a sum not to exceed a value determined by the Town Officials to be necessary to achieve consistent compliance.

11.2 Liability Insurance

The Town may decline to issue or reissue an Industrial Discharge Permit to any User who has failed to comply with any provision of this Ordinance, a previous Industrial Discharge Permit, or Order issued hereunder, or any other Pretreatment Standard or requirement, unless the User first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

SECTION 12 - SEPTAGE DISPOSAL

The Town of Jay POTW does not accept septage and no facility within the Town may accept septage. The Town of Jay has made arrangements for the disposal of septage generated within the Town at the Town of Livermore Falls POTW. Disposal of septage at the Livermore Falls POTW shall be in accordance with the Livermore Falls Sewer Ordinance.

SECTION 13 - VALIDITY

- A. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.
- B. The validity of any section, clause, sentence, or provision of this Ordinance shall not affect the validity of any other part of this Ordinance that can be given effect without such invalid part or parts.

SECTION 14 - INTERPRETATION OF REQUIREMENTS AND APPEALS

14.1 Interpretation

The provisions of this Ordinance with respect to the meaning of technical terms and phrases, the classification of different types of sewers, the regulations with respect to making connections to sewers or drains, and other technical matters shall be interpreted and administered by the Superintendent.. An advisory interpretation will not be subject to appeal.

14.2 Appeals

Any party aggrieved by any final determination under this Ordinance, as amended, from time to time, shall have the right of appeal within thirty (30) calendar days of said determination to the Town Manager, unless such determination was made in the first instance by the Town Manager. The Town Manager shall issue a final decision on appeal within thirty (30) calendar days. If said appeal is denied by the Town Manager, then the aggrieved party shall have the right to appeal to the Board of Selectmen within thirty (30) calendar days. If said appeal is denied by the Board of Selectmen, then the aggrieved party shall have the right to appeal to the Franklin County Superior Court pursuant to Maine Rule of Civil Procedure 80B, provided that said appeal is filed within thirty (30) calendar days from the issuance of the final decision of the Board of Selectmen. An appeal shall not act as an automatic stay.

SECTION 15 - EFFECTIVE DATE

This Ordinance shall be effective upon its enactment at the Town Meeting and as may be amended from time to time.

Exhibit A

Special Circumstances for Sewer Billing

(Date) _____

Seasonal Residents: For those who winter in warmer climates, move to a camp or cottage for the summer months, are otherwise away for extended periods of time or use an outdoor faucet during the “winter quarter”; The Town will use the previous year’s total water usage for sewer billing purposes. If the property in question uses an exterior water faucet for outdoor purposes and the water does not go into the sewer system and the property owner desires to have the quantity of water used outdoors deducted from the Water District’s usage quantity, the property owner will be required to install and maintain a water meter in good and serviceable condition on the exterior faucet. The property owner will be required to purchase the meter from the Sewer Department. The Town will read the meter as necessary for billing purposes.

Large Quantity Users with Varying Quantities: For those who use large quantities of water which may vary greatly from quarter to quarter; The Town will use the previous year’s total water usage for sewer billing purposes. If the property in question uses an exterior water faucet for outdoor purposes and the water does not go into the sewer system and the property owner desires to have the quantity of water used outdoors deducted from the Water District’s usage quantity, the property owner will be required to install and maintain a water meter in good and serviceable condition on the exterior faucet. The property owner will be required to purchase the meter from the Sewer Department. The Town will read the meter as necessary for billing purposes.

Greenhouses and Florists: These types of establishments use water for their plants which does not go into the sewer system. Customers with this circumstance who want to have the water used for plant watering deducted from the Water District’s reported usage will be required to install and maintain a water meter in good and serviceable condition on a faucet dedicated solely for plant watering. The property owner will be required to purchase the meter from the Sewer Department. The Town will read the meter as necessary for billing purposes.

Winter Quarter Water Meter Readings Higher Than All Other Quarters of the Year: Prior to May 1st of each year, the customer must present the Town with a copy of their water bill for the winter quarter that is used for sewer billing purposes plus a copy of the three previous quarters water bills. The customer must complete a form provided by the Town of Jay that explains why they are requesting a revised billing format. If the winter quarter usage is higher than the average usage of the other 3 quarters, the Town may use the total usage for the entire year instead of using the winter quarter usage multiplied by 4.

Erroneous Water Meter Readings:

Water meter readings that appear too low or too high will be dealt with on a case by case basis. The Town may request the Water District to repair, calibrate or replace a water meter that appears to be recording erroneously high or low metered values. If an agreement cannot be reached between the Town and the Water District concerning the correction of a believed erroneous reading and/or be reached between the Town and the customer concerning the appropriate amount of water usage, the guidelines for residential and commercial customers outlined below may be used to assess sewer fees for the period of time in question.

No Water District Water Meter- Residential:

A residential customer has the option to install and maintain a water meter in good and serviceable condition at their own expense for the Town to read as necessary for billing purposes. For customers who choose not to install a water meter, the Town will assess a sewer fee based on the number of bedrooms as follows:

A sewer fee will be assessed according to the number of bedrooms. The Town will use 45 gallons per day (gpd) per bedroom. Example 1) A 1 bedroom home = 1 bedroom X 45 gpd X 365 days/yr / 7.48 gals/ft³ = 2,200 ft³ annual usage. Example 2) A 3 bedroom home would pay for 3 X 2,200 = 6,600 ft³ of usage annually. Example 3) A 4 unit apartment building with a total of 12 bedrooms would pay for 12 X 2,200 = 26,400 ft³ of usage annually. To summarize, the number of bedrooms X 2,200 = total annual cubic foot water usage for sewer fee assessment.

For residential buildings without water meters, each building that is connected to the Town sewer system will be assessed the minimum fee and associated cubic foot allowance.

No Water District Water Meter –Non-Residential:For non-water use related entities the Town will assess a sewer fee based on the number of employees. using a quantity of 20 gallons per day per employee which equals 975 ft³/year/employee. If the Town or the entity believes this allocation quantity to be inequitable, the entity must purchase a water meter from the Sewer Department and the Town will read the meter as necessary for billing purposes. **No Water**

District Water Meter – Commercial, Water Use Related: The Town will determine “water use related commercial entities” on a case by case basis. Water meters will be required for all water use related entities connected to the Town sewer system. The Town will read the meter as necessary for billing purposes. If the entity has a meter reading that is thought to be erroneous by either the Town or the entity, an interim usage quantity may be determined by the Town staff for billing purposes. Water meters will be required to be installed and maintained in good and serviceable condition at the owner’s expense if a water meter is not provided by the Water District.

Non-Metered Usage Assessment Disputes: Any person or entity who disagrees with the amount of usage assessed by the Town for non-metered usage may install a water meter and maintain the meter in good and serviceable condition at their own expense and have the Town read the meter as necessary for sewer billing purposes.

Vacant Lots and Buildings: Vacant lots and buildings will be assessed a sewer fee based on water usage. If an owner of a vacant lot wishes to disconnect from the Town sewer system, they may do so by digging up and capping the sewer connection by a means approved by, and in the presence of, the Sewer Superintendent or his authorized agent. Vacant buildings are not allowed to disconnect from the Town sewer system unless the building that is connected to the Town sewer system is demolished and removed from the site and the sewer service is capped as defined herein. An unoccupied mobile home will not be considered a “vacant lot” unless the mobile home is removed from the lot and the sewer service is capped as defined herein. Sewer service connections must be capped prior to July 1st in order to qualify for removal from the upcoming years’ and future billing cycles. The ability to reconnect to the Town sewer system in the future will not be guaranteed. Collection system and/or treatment facility capacity for the capped sewer service will not be reserved.

Metered Water Leaks That Do Not Enter the Town Sewer System: If a water meter reading that is used for sewer billing purposes includes water that has not entered the town sewer system (such as an outside sill faucet that leaked onto the ground, a pipe under a mobile home that leaked on the ground, etc.), the Town may use the average of the 3 previous quarters water meter readings X 4 for sewer billing purposes. The Town will have the final determination as to whether or not the metered water actually entered the Town sewer system.

**SHORELAND ZONING ORDINANCE
FOR THE MUNICIPALITY OF
JAY, MAINE**

A TRUE COPY ATTEST CERTIFIED BY:

Ronda L. Palmer, Town Clerk

Adopted June 12, 2018

**Shoreland Zoning Ordinance
for the Municipality of Jay, Maine
June 12, 2018**

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**Shoreland Zoning Ordinance for the Municipality of
Jay, Maine**

Adopted June 12, 2018

Section 1. Purposes

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

Section 2. Authority

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

Section 3. Applicability

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

- normal high-water line of any great pond or river, or
- upland edge of a freshwater wetland,

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

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

Section 4. Effective Date

Effective Date of Ordinance and Repeal of Formerly Adopted Ordinance

This Ordinance, which was approved by the Town of Jay Select Board on April 23, 2018 and adopted by majority vote of the citizens of Jay on June 12, 2018, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance within forty-five (45) days of his/her receipt of the Ordinance, it shall be

automatically approved. Upon approval of this Ordinance, the previously adopted shoreland zoning ordinance, effective April 27, 2009, is hereby repealed.

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

Section 5. Availability

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

Section 6. Severability

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

Section 7. Conflicts with Other Ordinances

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

Section 8. Amendments

This Ordinance may be amended by majority vote of the citizens of Jay. Copies of amendments, attested and signed by the Town of Jay Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the citizens of Jay 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.

Section 9. Districts and Zoning Map

A. Official Shoreland Zoning Map

The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map which is made a part of this Ordinance:

1. Resource Protection
2. Limited Residential
3. General Development
4. Stream Protection

B. Scale of Map

The Official Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

C. Certification of Official Shoreland Zoning Map

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

D. Changes to the Official Shoreland Zoning Map

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

Section 10. Interpretation of District Boundaries

Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the center lines 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.

Section 11. Land Use Requirements

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

Section 12. Non-conformance

A. Purpose

It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before June 22, 1992 shall be allowed to continue, subject to the requirements set forth in this section. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

B. General

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

C. Non-conforming Structures

1. *Expansions:* All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in Section 15(B)(1). A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (a) and (b) below.
 - a. Expansion of any portion of a structure within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body or wetland setback requirement.

- b. Notwithstanding paragraph (a), above, if a legally existing 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 municipal land use standards are met and the expansion is not prohibited by Section 12(C)(1).
 - i. The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. 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.
- c. All other legally existing 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 municipal land use standards are met and the expansion is not prohibited by Section 12(C)(1) or Section 12(C)(1)(a), 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 for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.
 - ii. For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. 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 limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.
 - iii. In addition to the limitations in subparagraphs (i) and (ii), for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that 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 limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.
- d. An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within 90 days of approval. The recorded

plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.

2. *Foundations:* Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 12(C)(3) Relocation, below.
3. *Relocation:* A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation in 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:

- a. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five (5) trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

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

vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

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

- 4. *Reconstruction or Replacement:* Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming footprint of the reconstructed or replaced structure at its new location. If the total 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 non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the code enforcement officer within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider in addition to the criteria in Section 12(C)(3) above, the physical condition and type of foundation present, if any.

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

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

D. Non-conforming Uses

1. *Expansions:* Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 12(C)(1) above.
2. *Resumption Prohibited:* A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.
3. *Change of Use:* An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12(C)(4) above.

E. Non-conforming Lots

1. *Non-conforming Lots:* A non-conforming lot of record as of June 22, 1992 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 as of June 22, 1992, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 MRSA section 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 as of June 22, 1992, 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 as of June 22, 1992, or at any time since, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to two (2) or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons as of June 22, 1992 and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and;

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

Section 13. Establishment of Districts

A. Resource Protection District

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

1. Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, and wetlands associated with great ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on the map entitled "Jay Maine Wildlife Habitat" on page 98 of the 2011 Town of Jay Comprehensive Plan. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean areas characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water. "Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.
2. Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100 year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
3. Areas of two (2) or more contiguous acres with sustained slopes of 20% or greater.
4. Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater wetland as defined, and which are not surficially connected to a water body during the period of normal high water.
5. Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement.
6. Areas within 250 feet, horizontal distance, of the normal high-water line of Parker Pond as it is a water supply source for Livermore Falls Water District.

B. Limited Residential District

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

C. General Development District

The General Development District includes the following types of existing, intensively developed areas:

1. Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
 - a. Areas devoted to manufacturing, fabricating or other industrial activities;
 - b. Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and
 - c. Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.
2. Areas otherwise discernable as having patterns of intensive commercial, industrial or recreational uses.

Portions of the General Development District may also include residential development. However, no area shall be designated as a General Development District based solely on residential use.

In areas adjacent to great ponds classified GPA and adjacent to rivers flowing to great ponds classified GPA, the designation of an area as a General Development District shall be based upon uses existing as of June 22, 1992. There shall be no newly established General Development Districts or expansions in area of existing General Development Districts adjacent to great ponds classified GPA and adjacent to rivers flowing to great pond classified GPA.

D. Stream Protection District

The Stream Protection District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the

normal high-water line of a great pond or river, or within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a wetland. Where a stream and its associated shoreland area is located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

Section 14. Table of Land Use

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

GD - General Development

SP - Stream Protection

Table 1. Land Uses in the Shoreland Zone

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

25. Campgrounds	no	7 no	PB	PB
26. Road construction	PB	8 no	PB	PB
27. Land management roads	yes	PB	yes	yes
28. Parking facilities	no	7 no	PB	PB
29. Marinas	PB	no	PB	PB
30. Filling and earth moving of <10 cubic yards	CEO	CEO	yes	yes
31. Filling and earth moving of >10 cubic yards	PB	PB	CEO	CEO
32. Signs	yes	yes	yes	yes
33. Uses similar to allowed uses	CEO	CEO	CEO	CEO
34. Uses similar to uses requiring a CEO permit	CEO	CEO	CEO	CEO
35. Uses similar to uses requiring a PB permit	PB	PB	PB	PB

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

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

³ In RP not allowed in areas so designated because of wildlife value.

⁴ Provided that a variance from the setback requirement is obtained from the Board of Appeals.

⁵ Reserved

⁶ See further restrictions in Section 15(L)(2).

⁷ Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the PB.

⁸ Except as provided in Section 15(H)(3).

⁹ Single family residential structures may be allowed by special exception only according to the provisions of Section 16(E), Special Exceptions. Two-family residential structures are prohibited.

¹⁰ Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.

¹¹ Excluding bridges and other crossings not involving earthwork, in which case no permit is required.

¹² Permit not required but must file a written "notice of intent to construct" with CEO.

Section 15. Land Use Standards

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

A. Minimum Lot Standards

1. Dimensions	Minimum Lot Area <u>(sq.ft.)</u>	Minimum Shore <u>Frontage (ft.)</u>
<u>Residential per dwelling unit</u>	40,000	200
<u>Governmental, Institutional, Commercial or Industrial per principal structure</u>	60,000	300
<u>Public and Private Recreational Facilities</u>	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 classified GPA and rivers that flow to great ponds classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge

of a wetland, except that in the General Development District the setback from the normal high-water line shall be at least twenty-five (25) feet, horizontal distance. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

- a. In addition, the water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
 - b. On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.
2. Principal or accessory structures and expansions to existing structures which are permitted in the Resource Protection, Limited Residential, and Stream Protection Districts, shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, cupolas, domes, widow's walks and similar structures having no floor area.
 3. The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood plain soils.
 4. With the exception of the General Development District where located adjacent to rivers that do not flow to great ponds, non-vegetated surfaces shall not exceed a total of twenty (20) percent of the portion of the lot located within the shoreland zone. This limitation does not apply to public boat launching facilities regardless of the district in which the facility is located.

In the General Development District located adjacent to rivers that do not flow to great ponds, non-vegetated surfaces shall not exceed a total of seventy (70) percent of the portion of the lot located within the shoreland zone.

For the purposes of calculating lot coverage, 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 nonvegetated surfaces when calculating lot coverage for lots of record on March 24, 1990 and in continuous existence since that date.

5. Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:
 - a. The site has been previously altered and an effective vegetated buffer does not exist;
 - b. The wall(s) is (are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
 - 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, 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 standards in Section 15(P)(2) (a), may traverse the buffer;
6. Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A. Section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

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

1. No more than one pier, dock, wharf or similar 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 beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
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 beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
9. Except in the General Development District, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.
10. Vegetation may be removed in excess of the standards in Section 15(P) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.
 - a. When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment accessway must be restored.
 - b. Revegetation must occur in accordance with Section 15(S).
11. A deck over a river may be exempted from the shoreland setback requirements if it is part of a downtown revitalization project that is

defined in a project plan approved by the legislative body of the municipality, and may include the revitalization of structures formerly used as mills that do not meet the structure setback requirements, if the deck meets the following requirements:

- a. The total deck area attached to the structure does not exceed 700 square feet;
- b. The deck is cantilevered over a segment of a river that is located within the boundaries of the downtown revitalization project;
- c. The deck is attached to or accessory to an allowed commercial use in a structure that was constructed prior to 1971 and is located within the downtown revitalization project;
- d. The construction of the deck complies with all other applicable standards, except the shoreline setback requirements in section 15(B); and
- e. The construction of the deck complies with all other state and federal laws.

D. Campgrounds

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

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

E. Individual Private Campsites

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

1. One campsite per lot existing as of June 22, 1992, or thirty thousand (30,000) square feet of lot area within the shoreland zone, whichever is less, may be permitted.
2. When an individual private campsite is proposed on a lot that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual private campsite separately.
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 classified GPA or river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
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 classified GPA, and rivers and streams which flow to great ponds classified GPA:

1. Auto washing facilities
2. Auto or other vehicle service and/or repair operations, including body shops
3. Chemical and bacteriological laboratories
4. Storage of chemicals, including herbicides, pesticides or fertilizers other than amounts normally associated with individual households or farms
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, in Districts other than the General Development District, shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.
2. Parking areas shall be adequately sized for the proposed use and shall be designed to prevent storm water runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.
3. In determining the appropriate size of proposed parking facilities, the following shall apply:
 - a. Typical parking space: Approximately ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.
 - b. Internal travel aisles: Approximately twenty (20) feet wide.

H. Roads and Driveways

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

1. Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and seventy-five (75) feet, horizontal distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback

requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

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

Section 15 (H)(1) does not apply to approaches to water crossings nor 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 subsection 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:

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

- b. Drainage dips may be used in place of ditch relief culverts only where the road grade is ten (10) percent or less.
- c. On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.

- d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.
8. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

I. Signs

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

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

J. Storm Water Runoff

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

K. Septic Waste Disposal

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.

L. Essential Services

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

M. Mineral Exploration and Extraction

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

Mineral extraction may be permitted under the following conditions:

1. A reclamation plan shall be filed with, and approved by the Planning Board before a permit is granted. Such plan shall describe in detail

procedures to be undertaken to fulfill the requirements of Section 15 (M) (3) below.

2. No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line, without written permission of the owner of such adjacent property.
3. Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
 - a. All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
 - b. The final graded slope shall be two and one-half to one (2½:1) slope or flatter.
 - c. Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
4. In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

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 classified GPA or a river flowing to a

great pond, classified GPA, or within seventy- five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.

3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.
4. There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, from other water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams, and wetlands. Operations in existence as of June 22, 1992 and not in conformance with this provision may be maintained.
5. Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance of other water bodies, nor; within twenty-five (25) feet, horizontal distance, of tributary streams, and wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan that has been filed with the planning board.

O. Timber Harvesting (Statewide Standards)

1. **Shoreline integrity and sedimentation.** Persons conducting timber harvesting and related activities must take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands occurs, such conditions must be corrected.
2. **Slash treatment.** Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high-water line of any water body or tributary stream, or the upland edge of a wetland. Section 15(O)(2) does not apply to minor, incidental amounts of

slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.

- a. Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than 4 feet above the ground.
- b. Adjacent to great ponds, rivers and wetlands:
 - i. No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line or upland edge of a wetland; and
 - ii. Between 50 feet and 250 feet, horizontal distance, of the normal high-water line or upland edge of a wetland, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.

3. Timber harvesting and related activities must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. This requirement may be satisfied by following one of the following three options:

a. **Option 1 (40% volume removal)**, as follows:

- i. Harvesting of no more than 40 percent of the total volume on each acre of trees 4.5 inches DBH or greater in any 10 year period is allowed. Volume may be considered to be equivalent to basal area;
- ii. A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and
- iii. Within 75 feet, horizontal distance, of the normal high-water line of rivers, streams, and great ponds, and within 75 feet, horizontal distance, of the upland edge of a wetland, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the

calculation of total volume removal. Volume may be considered equivalent to basal area.

b. **Option 2 (60 square foot basal area retention)**, as follows:

- i. The residual stand must contain an average basal area of at least 60 square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which 40 square feet per acre must be greater than or equal to 4.5 inches DBH;
- ii. A well-distributed stand of trees which is windfirm, and other vegetation including existing ground cover, must be maintained; and
- iii. Within 75 feet, horizontal distance, of the normal high-water line of water bodies and within 75 feet, horizontal distance, of the upland edge of wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond, or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.

c. **Option 3 (Outcome based)**, which requires: An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the State of Maine Department of Conservation's Bureau of Forestry (Bureau) for review and approval, which provides equal or better protection of the shoreland area than this rule.

Landowners must designate on the Forest Operations Notification form required by 12 M.R.S.A. Chapter 805, subchapter 5 which option they choose to use. If landowners choose Option 1 or Option 2, compliance will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the alternative method.

The Bureau may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.

4. **Skid trails, yards, and equipment operation.** This requirement applies to the construction, maintenance, and use of skid trails and yards in shoreland areas.
 - a. Equipment used in timber harvesting and related activities shall not use river, stream or tributary stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.
 - b. Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, tributary stream, or wetland. Upon termination of their use, skid trails and yards must be stabilized.
 - c. **Setbacks:**
 - i. Equipment must be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, tributary stream, or wetland. On slopes of 10 percent or greater, the setback for equipment operation must be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent. Where slopes fall away from the resource, no increase in the 25-foot setback is required.
 - ii. Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
5. **Land Management Roads.** Land management roads, including approaches to crossings of water bodies, tributary stream channels, and wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, tributary stream or wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the

watercourse or wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the setback requirements in Section 15(O)(7) of this rule.

- a. Land management roads and associated ditches, excavation, and fill must be set back at least:
 - i. 100 feet, horizontal distance, from the normal high-water line of a great pond, river or wetland;
 - ii. 50 feet, horizontal distance, from the normal high-water line of streams; and
 - iii. 25 feet, horizontal distance, from the normal high-water line of tributary streams
- b. The minimum 100 foot setback specified in Section 15(O)(5)(a)(i) above may be reduced to no less than 50 feet, horizontal distance, and the 50 foot setback specified in Section 15(O)(5)(a)(ii) above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and 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 to avoid sedimentation of the water body, tributary stream or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- c. On slopes of 10 percent or greater, the land management road setback must be increased by at least 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent.
- d. New land management roads are not allowed within the shoreland area along Significant River Segments as identified in 38 M.R.S.A. section 437, nor in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.

- e. Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the setback requirements in Section 15(O)(7). Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream, or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- f. **Road closeout and discontinuance.** Maintenance of the water control installations required in Section 15(O)(5)(e) must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.
- g. **Upgrading existing roads.** Extension or enlargement of presently existing roads must conform to the provisions of Section 15(O). Any nonconforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more nonconforming.
- h. **Exception.** Extension or enlargement of presently existing roads need not conform to the setback requirements of Section 15(O)(5) (a) if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and 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 to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- i. **Additional measures.** In addition to the foregoing minimum requirements, persons undertaking construction and maintenance

of roads and river, stream and tributary stream crossings must take reasonable measures to avoid sedimentation of surface waters.

6. **Crossings of waterbodies.** Crossings of rivers, streams, and tributary streams must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal flows.
 - a. **Determination of flow.** Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable as a means of calculating the 10 year and 25 year frequency water flows and thereby determining water crossing sizes as required in Section 15(O): The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.
 - b. **Upgrading existing water crossings.** Extension or enlargement of presently existing water crossings must conform to the provisions of Section 15(O). Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high-water line must conform to the provisions of Section 15(O).
 - c. **Other Agency Permits.** Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on waterbodies other than a river, stream or tributary stream may require a permit from the Land Use Regulation Commission, the Department of Environmental Protection, or the US Army Corps of Engineers.
 - d. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.
 - e. **Notice to Bureau of Forestry.** Written notice of all water crossing construction, maintenance, alteration and replacement activities in shoreland areas must be given to the Bureau prior to the commencement of such activities. Such notice must contain all information required by the Bureau, including:

- i. a map showing the location of all proposed permanent crossings;
 - ii. the GPS location of all proposed permanent crossings;
 - iii. for any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and
 - iv. a statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.
- f. **Water crossing standards.** All crossings of rivers require a bridge or culvert sized according to the requirements of Section 15(O)(6)(g) below. Streams and tributary streams may be crossed using temporary structures that are not bridges or culverts provided:
- i. concentrated water runoff does not enter the stream or tributary stream;
 - ii. sedimentation of surface waters is reasonably avoided;
 - iii. there is no substantial disturbance of the bank, or stream or tributary stream channel;
 - iv. fish passage is not impeded; and,
 - v. water flow is not unreasonably impeded.

Subject to Section 15(O)(6)(f)(i-v) above, skid trail crossings of streams and tributary streams when channels of such streams and tributary streams are frozen and snow-covered or are composed of a hard surface which will not be eroded or otherwise damaged are not required to use permanent or temporary structures.

- g. **Bridge and Culvert Sizing.** For crossings of river, stream and tributary stream channels with a bridge or culvert, the following requirements apply:
- i. Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows or with a cross-sectional area at least equal to 3 times the cross-sectional area of the river, stream, or tributary stream channel.
 - ii. Temporary bridge and culvert sizes may be smaller than provided in Section 15(O)(6)(g)(i) if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body or

tributary stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high-water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:

1. use of temporary skidder bridges;
 2. removing culverts prior to the onset of frozen ground conditions;
 3. using water bars in conjunction with culverts;
 4. using road dips in conjunction with culverts.
- iii. Culverts utilized in river, stream and tributary stream crossings must:
1. be installed at or below river, stream or tributary stream bed elevation;
 2. be seated on firm ground;
 3. have soil compacted at least halfway up the side of the culvert;
 4. be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and
 5. have a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.
- iv. River, stream and tributary stream crossings allowed under Section 15(O), but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a water crossing may be required to pass a 100-year flood event.
- v. **Exception.** Skid trail crossings of tributary streams within shoreland areas and wetlands adjacent to such streams may be undertaken in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or

the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected.

- h. **Skid trail closeout.** Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:
 - i. Bridges and culverts installed for river, stream and tributary stream crossings by skid trails must either be removed and areas of exposed soil stabilized, or upgraded to comply with the closeout standards for land management roads in Section 15(O)(6)(i) below.
 - ii. Water crossing structures that are not bridges or culverts must either be removed immediately following timber harvesting and related activities, or, if frozen into the river, stream or tributary stream bed or bank, as soon as practical after snowmelt.
 - iii. River, stream and tributary stream channels, banks and approaches to crossings of water bodies and tributary streams must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.
- i. **Land management road closeout.** Maintenance of the water control features must continue until use of the road is discontinued and the road is put to bed by taking the following actions:
 - i. Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.
 - ii. Water crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body or tributary stream.

- iii. Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:
 1. it shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;
 2. it shall be designed to provide an opening with a cross-sectional area at least 3 1/2 times the cross-sectional area of the river, stream or tributary stream channel; or
 3. it shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, stream or tributary stream.

If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

7. Slope Table

Filter strips, skid trail setbacks, and land management road setbacks must be maintained as specified in Section 15(O), but in no case shall be less than shown in the following table.

Average slope of land between exposed mineral soil and the shoreline (percent)	Width of strip between exposed mineral soil and shoreline (feet along surface of the ground)
0	25
10	45
20	65
30	85
40	105
50	125
60	145

70 165

- 8. **Definitions.** Unless otherwise provided herein, this Section O incorporates by reference the definitions contained in the Maine Forest Service Rules Chapter 20, “Forest Regeneration and Clearcutting Standards”, and Chapter 21, “Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas”.

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

1. In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove hazard trees as described in section 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 strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, or within a strip extending seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

- a. There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree crown 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 buffer strip is not created.
- b. Selective cutting of trees within the buffer strip is allowed provided that a well distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 15(P)(2)(b) a "well-distributed stand of trees " adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 24 or more in each 25- foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

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.

The following shall govern in applying this point system:

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

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

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

- c. In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered or removed, except to provide for a footpath or other permitted uses as described in Section 15(P) paragraphs (2) and (2) (a) above.
- d. Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- e. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, dead or hazard trees results in the creation of cleared openings, these openings shall be replanted with native tree species in accordance with Section Q, below, unless existing new tree growth is present.

- 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).

Section 15 (P)(2) does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas are limited to the minimum area necessary.

3. At distances greater than one hundred (100) feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of no more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision applies to the portion of a lot within the Shoreland zone, including the buffer area, but shall not apply to the General Development District.

4. Legally existing non-conforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
5. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15(P).

Q. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal.

1. Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if 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, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four (4) feet in height, and be no less than two (2) inches in diameter. Stumps may not be removed.

- b. Outside of the shoreline buffer, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the shoreland zone, or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level.
 - c. The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the growing season.
 - d. The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
 - e. The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.
2. Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
- a. Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:
 - i. The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;

- ii. Stumps from the storm-damaged trees may not be removed;
 - iii. Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and
 - iv. If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) square feet of lost canopy.
- b. Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

R. Exemptions to Clearing and Vegetation Removal Requirements

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

1. The 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 vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Section 15(P) apply;
2. The 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 removal of vegetation from the location of public swimming areas associated with an allowed public recreational facility;
4. The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of section 15(N) are complied with;
5. The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal

brownfields program or a voluntary response action program pursuant 38 M.R.S.A section 343-E, and that is located along a river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A section 465-A.

6. The removal of non-native invasive vegetation species, provided the following minimum requirements are met:
 - a. If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;
 - b. Removal of vegetation within twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and
 - c. If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.
7. The 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 in response to violations of the vegetation standards set forth in Section 15(P), to address the removal of non- native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

1. The property owner 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 at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation,

in which case 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 at a minimum consist of saplings;
 - 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 a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling 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 or saplings is required for a minimum five (5) years period.
5. Revegetation activities must meet the following requirements for woody vegetation and 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 within this chapter for minimum of five (5) years
7. 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, an area must be supplemented with a minimum four (4) inch depth of leaf mulch and/or bark mulch 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 chapter for 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. Drainageways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with rip-rap.

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 Sites

Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

Section 16. Administration

A. 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 one is held. Permits shall be approved if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

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

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

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion, or sedimentation to surface waters;
3. Will adequately provide for the disposal of all wastewater;
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. Will conserve shore cover and visual, as well as actual, points of access to inland waters;
6. Will protect archaeological and historic resources as designated in the comprehensive plan;
7. Will avoid problems associated with flood plain development and use; and
8. Is in conformance with the provisions of Section 15, Land Use Standards.

If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or statute administered by the municipality.

E. Special Exceptions

In addition to the criteria specified in Section 16(D) above, excepting structure setback requirements, the Planning Board may approve a permit for a single

family residential structure in a Resource Protection District provided that the applicant demonstrates that all of the following conditions are met:

1. There is no location on the property, other than a location within the Resource Protection District, where the structure can be built.
2. The lot on which the structure is proposed is undeveloped and was established and recorded in the Franklin County Registry of Deeds before the adoption of the Resource Protection District.
3. All proposed buildings, sewage disposal systems and other improvements are:
 - a. Located on natural ground slopes of less than 20%; and
 - b. Located outside the floodway of the 100-year flood-plain along rivers and artificially formed great ponds along rivers, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100-year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance.

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

4. The total footprint, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.
5. All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the flood-plain, and its proximity to moderate-value and high-value wetlands.

F. Expiration of Permit

Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the

applicant shall have one additional year to complete the project, at which time the permit shall expire.

G. Installation of Public Utility Service

A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance, has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

H. Appeals

1. Powers and Duties of the Board of Appeals

The Board of Appeals shall have the following powers:

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

2. Variance Appeals

Variances may be granted only under the following conditions:

- a. Variances may be granted only from dimensional requirements including but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
- b. Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
- c. The Board shall not grant a variance unless it finds that:

- i. The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and
- ii. The strict application of the terms of this Ordinance would result in undue hardship.

The term "undue hardship" shall mean:

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

- d. Notwithstanding Section 16(H)(2)(c)(ii) above, the Board of Appeals, or the codes enforcement officer if authorized in accordance with 30-A MRSA §4353-A, may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for the access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. Any permit issued pursuant to this subsection 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, appeal procedures, appeals to Superior Court and Board of Appeal's reconsideration of decisions shall be in accordance with the "Ordinance to Establish a Board of Appeals".

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 insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.

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.

Section 17. Definitions

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

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

Agriculture - the production, keeping or maintenance, for sale or lease, of plants 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 forest management and timber harvesting activities.

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

Basal area - the area of cross-section of a tree stem at 4½ 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.

Bureau of Forestry – State of Maine Department of Agriculture, Conservation, and Forestry

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.

Cross sectional area - the cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average stream or tributary stream channel depth. The stream or tributary stream channel width is the straight line

distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.

DBH - the diameter of a standing tree measured 4½ 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 a mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special educational, vocational rehabilitation or related services.

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

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

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

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

Expansion of a structure - an increase in the 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 of a structure or ground area devoted to a particular use.

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

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

Floor area - the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls.

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.

Forest management activities - timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

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

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

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

Freshwater wetland - 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, inland waters and which cannot be located away from these waters. The uses include, but are not limited to, commercial and recreational fishing and boating facilities, 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 aides, 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 and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general public access to inland waters. Recreational boat storage buildings are not considered to be a functionally 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.

Great pond classified GPA - any great pond classified GPA, pursuant to 38 M.R.S.A. Article 4-A Section 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds.

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

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

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

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

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

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

Land management road - a route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.

Licensed forester – a forester licensed under 32 M.R.S. §5501 (3) (Supp. 2013).

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

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

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

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

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

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

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

Native – indigenous to the local forests.

Non-conforming condition – non-conforming lot, structure or use which is allowed solely because it was in lawful existence as of June 22, 1992.

Non-conforming lot - a single lot of record which, as of June 22, 1992, did not meet the area, frontage, or width requirements of the district in which it is located.

Non-conforming structure - a structure which does not meet any one or more of the following dimensional requirements; setback, height, lot coverage or footprint, but which is allowed solely because it was in lawful existence as of June 22, 1992.

Non-conforming use - use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence as of June 22, 1992.

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 ecosystems.

Normal high-water line - that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

Outlet stream - any perennial or intermittent stream, as shown 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, that flows from a freshwater wetland.

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

Piers, docks, wharfs, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland-

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

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

Principal structure - a 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:

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

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

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

Replacement system - a system intended to replace:

1. an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or
2. any existing overboard wastewater discharge.

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

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

Residual stand – a stand of trees remaining in the forest following timber harvesting and related activities.

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

River - a free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth.

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

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 waterbody 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 or river; within 250 feet of the upland edge of a freshwater wetland; or within seventy- five (75) feet, horizontal distance, of the normal high-water line of a stream.

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

Skid road or skid trail - a route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

Slash - the residue, e.g., treetops and branches, left on the ground after a timber harvest.

Storm-damaged tree - a tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as the 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 to the national map to the point where the stream becomes a river or where the stream meets the Shoreland zone of another water body or wetland. When a stream meets the Shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.

Structure - anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind or anything constructed or erected on or in the ground. The term includes structures temporarily or permanently located, such as decks, patios and satellite dishes. Structure does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; 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; or 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; including, but not limited to: septic tanks, disposal fields, holding tanks, grandfathered cesspools, pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes. The term does not include any discharge system licensed under 38 M.R.S.A. Section 414, any surface wastewater disposal system, or any municipal or quasi-municipal sewer or wastewater 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. "Timber harvesting" does not include the cutting or removal of vegetation within the shoreland zone when associated with any other land use activities. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15 (P), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

Timber harvesting and related activities – timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

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

Tributary stream - 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 on 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.

Upland edge of a wetland - the boundary between upland and 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 ½ feet above ground level.

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

Water body - any great pond, river, or stream.

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

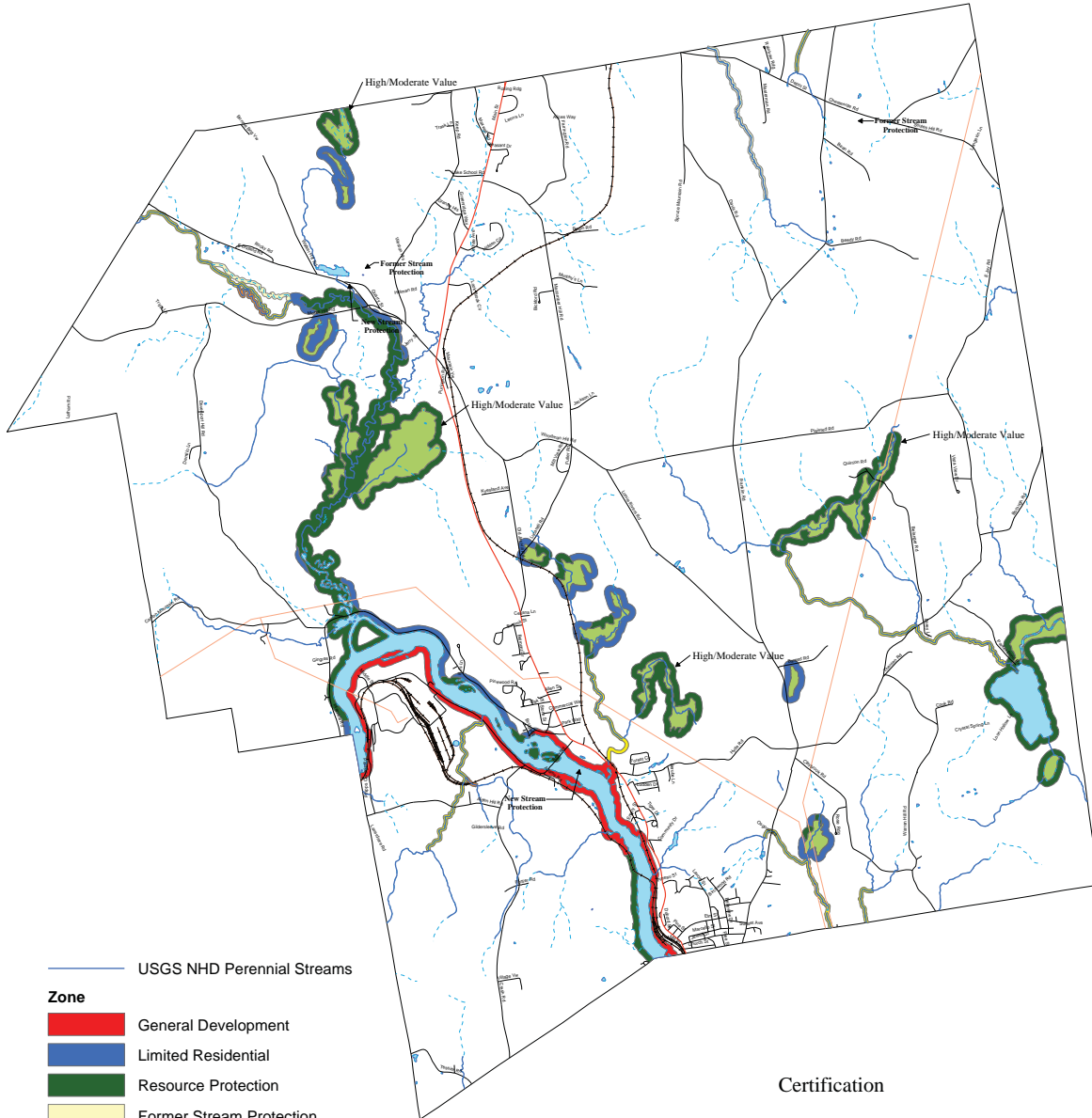
Wetland - a freshwater wetland.

Windfirm – the ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.

Woody vegetation – live trees or woody, non-herbaceous shrubs.

Jay, Maine

Official Shoreland Zoning Map



— USGS NHD Perennial Streams

Zone

- General Development
- Limited Residential
- Resource Protection
- Former Stream Protection
- New Stream Protection
- Stream Protection
- Wetland

Certification

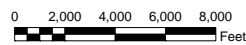
Town Clerk

Adopted: June 12, 2018

The depiction of the boundaries of the Shoreland Area on this Official Zoning Map is merely illustrative of their general location. The exact boundaries of the zone shall be determined by on-site inspection and measurement from the normal high water line or upland edge of a wetland.

Waterfowl and Wading Bird Habitat Values are based on 2008 Information.

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CHAPTER 5

SUBDIVISIONS

Part

1. Short Title and Definitions
2. Prohibitions
3. Application Procedure
4. General Design Guidelines and Requirements
5. Approval-Standards
6. Appeals, Violations, Penalties and Waivers

PART 1

SHORT TITLE AND DEFINITIONS

Section

- §5-101 Short Title
- §5-102 Definitions

§5-101 SHORT TITLE

This Chapter shall be known and may be cited as "**Jay Environmental Control and Improvement Ordinance-Subdivisions**"

§5-102 DEFINITIONS

A. In this Chapter, unless the context otherwise requires, the following words and phrases shall have the following meanings:

- 1. Subdivision.** "Subdivision" means: a subdivision as defined in Title 30-A M.R.S.A. Section 4401 et seq. and as hereafter amended.
- 2. Tract or parcel of land.** "Tract" or "Parcel of Land" means all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- 3. Jay Subdivision Permit.** "Jay Subdivision Permit" means the permit issued by the Board under this Chapter and includes all items submitted to obtain the approval.

4. Permanent Marker. "Permanent Marker" means a granite or cement monument, an iron pin or a drill hole in ledge.

5. Permanent Monument. "Permanent Monument" means a granite or cement monument not less than four (4) inches square with an iron reinforced rod at least 5/8" across the top capped with a surveyor's name and number. The Permanent Monument shall be set at least four (4) feet in the ground; provided, however, the Board may alter this requirement when the conditions on the ground make it impractical or impossible to reach four (4) feet in the ground.

6. Angle Marker. "Angle Marker" means an iron reinforced rod or similar rod capped with a surveyor's name and number.

7. Applicant. "Applicant" means any person applying under Part 3 of this Chapter for a Jay Subdivision Permit.

8. Official Submittal Date. "Official Submittal Date" means the date upon which the Board determines that a subdivision application is complete.

9. Dwelling Unit. "Dwelling unit" means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments.

10. Mobile Home. "Mobile Home" means those units constructed after June 15, 1976, commonly called "*newer* mobile homes," that the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, that in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and that are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities including the plumbing, heating, air conditioning or electrical systems contained in the unit.

This term also includes any structure that meets all the requirements of this subparagraph 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 States Code, Title 42, Section 5401, et seq.

11. Mobile Home Park. "Mobile Home Park" means a parcel of land under unified ownership used for the placement of 3 or more Manufactured Homes.

12. Modular Home. "Modular home" means manufactured homes commonly called "modular homes" that the manufacturer certifies are constructed in compliance with Title 10, chapter 951, and rules adopted under that chapter, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained in the unit.

13. Manufactured Housing. "Manufactured housing" means a structural unit or units designed for occupancy and constructed in a manufacturing facility and then transported by the use of its own chassis, or placed on an independent chassis, to a building site where it is used for housing.

14. Mobile Home Park Lot. "Mobile Home Park Lot" means the area of land on which an individual

home is situated within a mobile home park and which is reserved for use by the occupants of that home.

15. New structure or structures. "New structure or structures" includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this subchapter.

16. Principal Structure. "Principal structure" means any building or structure in which the main use of the premises takes place.

17. Freshwater wetland. "Freshwater wetland" means freshwater swamps, marshes, bogs and similar areas which are:

A. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and

B. Not considered part of a great pond, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

18. Abutter. "Abutter" means any person who owns property contiguous to the Proposed Subdivision Parcel, or directly across any public or private street or way adjacent to the Proposed Subdivision Parcel. In the case of a revision or amendment to a previously approved subdivision, abutter shall include those abutters to the original subdivision as well as all current owners within the original subdivision.

19. Proposed Subdivision Parcel. "Proposed Subdivision Parcel" means all or a portion of any parcel(s) of land that the applicant is submitting for subdivision approval.

20. Multiple Unit Housing. "Multiple Unit Housing" means a structure or structures located on a single lot, which structures are designed or used to house 2 or more families.

21. Farmland. "Farmland" means a parcel consisting of 5 or more acres of land that is:

A. Classified as prime farmland, unique farmland or farmland of statewide or local importance by the Natural Resources Conservation Service within the United States Department of Agriculture; or

B. Used for the production of agricultural products as defined in Title 7 M.R.S.A. Section 152.2.

22. Infrastructure Improvements. "Infrastructure Improvements" means roads, drainage and stormwater systems, common water and sewer systems whether public or private.

23. Substantial Construction. "Substantial Construction" means completing of at least 30% of the required infrastructure improvements measured as a percentage of total estimated cost of improvements.

B. In addition, Chapter 1 contains general definitions applicable throughout this Chapter.

PART 2
PROHIBITIONS

Section

§5-201 Prohibitions

§5-202 Standards for Jurisdiction and Exemptions

§5-201 PROHIBITIONS

A. No person may sell, lease, develop, grade, build upon or convey for consideration, offer or agree to sell, lease, develop, build upon or convey for consideration any land or dwelling unit:

1. In any subdivision unless the subdivision (A) has been approved by the Board, (B) the subdivision has been approved, when applicable, by the M.D.E.P, pursuant to Title 38 M.R.S.A. Chapter 3, subsection I, article 6, and (C) the Final Plan and the Board Order evidencing the Board's approval and a permit evidencing approval under Title 38 M.R.S.A. Chapter 3, subsection I, article 6, have been recorded in the Franklin County Registry of Deeds; if the subdivision is exempt from Title 38 M.R.S.A. Chapter 3, subsection I, article 6 by the operation of Title 38 M.R.S.A. Section 488(5), the recorded subdivision plan must note the exemption.

B. No person who has a Jay Subdivision Permit shall sell or convey any land in the subdivision unless a minimum of two (2) Permanent Monuments have been set within the subdivision and permanent markers have been set at all lot corners of the lots to be sold or conveyed and angle markers have been placed at all angles on the subdivision perimeter.

C. No public utility, as defined in Title 35-A M.R.S.A. Section 102.13, shall install or deliver services to any lot or dwelling unit in a subdivision unless the subdivision is an Exempt Division or has been approved by the Board and such approval is recorded in the Franklin County Registry of Deeds.

D. The violation of any of the conditions of a Jay Subdivision Permit shall be considered a violation of this Ordinance and subject to Chapter 4B.

E. A building official may not issue any permit for a building or use within a subdivision unless the subdivision has been approved under this Chapter and under Title 38, Chapter 3, Subchapter I, Article 6, where applicable.

§5-202 STANDARDS FOR JURISDICTION AND EXEMPTIONS

In determining whether the division of a tract or parcel of land into three (3) or more lots or dwelling units is a division creating a subdivision see Title 30-A M.R.S.A. Section 4401.4.

PART 3

APPLICATION PROCEDURE

Section

- §5-301 Pre-application Meeting
- §5-302 Jay Subdivision Permit Application
- §5-303 Board Action Upon Submission
- §5-304 Board Action After Completed Application has been Submitted
- §5-305 Board Action After Approval of the Preliminary Application
- §5-306 Conditions of Jay Subdivision Permit

§5-301 PRE-APPLICATION MEETING

Applicants may request to be placed on Board's agenda for a pre-application meeting at least ten (10) days in advance of a regularly scheduled meeting by contacting the Code Enforcement Officer. The purpose of the pre-application meeting is to meet with the Board prior to formal submission, to present a sketch plan and make a verbal presentation regarding the site and the proposed subdivision. The pre-application meeting is an optional step for the applicant and is not required.

- A. Submissions:** The Pre-application Sketch Plan shall show, in simple sketch form, the proposed subdivision, and other features in relation to existing conditions. The Sketch Plan, which may be a freehand penciled sketch, will be supplemented with general information to describe or outline the existing conditions of the site and the proposed subdivision.
- B. On-Site Inspection:** Within thirty (30) days of the pre-application meeting, the Board may conduct an on-site inspection of the property.
- C. Ownership Interest:** The applicant shall furnish written evidence showing right, title or interest (option, contract for sale, etc.) in the property to be subdivided.
- D. Liquidation Harvesting:** The applicant shall submit a statement concerning timber harvesting resulting in any violation of the Liquidation Harvesting Rule.

§5-302 JAY SUBDIVISION PERMIT APPLICATION

A. General.

1. Application for a Jay Subdivision Permit shall be made in accordance with Chapter 3 of this Ordinance and shall contain such additional information relating to the subdivision as required by this Section.

2. The submission of an application for a Jay Subdivision Permit shall not be considered to initiate the review process for the purpose of bringing the application under the protection of Title 1 M.R.S.A. Section 302 as amended.

3. **Fees.** The following Filing Fees and Review Fees shall be assessed against all applicants for Jay Subdivision Permit approval, including amendments or revisions to previously approved plans:

a. **Filing Fee.** All applications for Subdivision approval, including amendments or revisions to previously approved plans, shall be accompanied by a nonrefundable filing fee. The filing fee for new subdivisions shall be \$100 per lot or dwelling unit and the filing fee for amendments or revisions to previously approved plans shall be \$50 per lot or dwelling unit. Filing fees shall be made payable by check to the Town of Jay.

b. **Review Fee.** The applicant shall pay all direct costs specifically related to the application, including, legal, engineering, environmental consulting, survey, architectural, land use planning, other professional fees, preparation of information and materials for the Board, and other costs specifically related to the application (collectively "Review Costs"). The JAY SUBDIVISION REVIEW ACCOUNT is hereby established. All applications for Subdivision approval, including amendments or revisions to previously approved plans, shall be accompanied by an additional payment of \$150 for each lot or dwelling unit, which shall be deposited in the SUBDIVISION REVIEW ACCOUNT. The Review Fee may be used by the Board for Review Costs.

If the initial amount of the Review Fee is inadequate or anticipated to become inadequate, the Board shall make a reasonable estimate of the additional fee required to complete review and issue a notice to the applicant containing the following: (i) a request for payment of the additional Review Fee, and (ii) the general nature of the Review Costs expected to be incurred.

The Board and the Code Enforcement Officer may suspend activity regarding the application until any additional Review Fee has been paid. If an additional Review Fee is not paid within 60 days after notice, the Board may deny an application. Final payment of the Review Fee shall occur before issuance of the approval, disapproval, or approval with conditions.

When no further review is required for an application, any remaining Review Fee in the SUBDIVISION REVIEW ACCOUNT shall be refunded to the applicant. Such refund shall be complete no later than 60 days after the approval, denial, or approval with conditions of the application. Such refund shall be accompanied by a final accounting of expenditures from the SUBDIVISION REVIEW ACCOUNT specifically related to the application.

4. The review process for a Subdivision Permit application shall commence when the Board determines that such application is complete and has issued a receipt indicating that a completed application has been submitted.

5. A determination by the Board that a completed application has been submitted in no way commits or binds the Board to issue a Jay Subdivision Permit.

6. As provided for in Chapter 2 § 2-110(C), no item of business or plan shall be placed on the Board agenda for any meeting unless such item or plan shall have been submitted to the Board not less than ten (10) days prior to the date of a meeting or other proceeding, provided, however, that the Board may, upon request or on its own motion, waive the 10 day advance submission requirement. All applications, plans and other materials shall be submitted to the Code Enforcement Officer ten (10) days prior to the date of the meeting or other proceeding for review and distribution to the Board.

B. Application Form. The applicant shall submit eleven (11) copies of the application for a Jay Subdivision permit which shall consist of the following subsections:

1. General Information (see Subsection C),
2. Preliminary Plan (see Subsection D),
3. Topographic, Soil Erosion and Phosphorus Control Plans (see Subsection E), and
4. Other (see Subsection F).

C. The applicant shall submit a written application containing the following general information in the following order:

1. Project name and the name and address and phone number(s) of applicant.
2. Name, address and phone number(s) of the owners of the tract or parcel of land or structure to be subdivided (if other than applicant).
3. If applicant is a corporation, state whether the corporation is authorized to do business in Maine, and attach a copy of a current Certificate of Good Standing from the Secretary of State of Maine.
4. Name, phone number(s) and address of applicant's authorized representative (if different than applicant). Attach letter of authorization signed by property owner that authorizes the owner's representative to act on behalf of the property owner.
5. Name, phone number(s) and address and number of Registered Professional Engineer, Land Surveyor or Planner who prepared the preliminary plan of the subdivision.
6. Address to which all correspondence from the Board should be sent.
7. The nature of the applicant's real estate interest in the parcel or structure to be subdivided and a copy of the instrument creating the applicant's interest.
8. A list of the owners of record of any land abutting the tract or parcel of the lot to be subdivided or the lot on which the structure to be subdivided sits.
9. A statement from the applicant as to whether the tract or parcel of land or structure to be subdivided is in the entire or contiguous ownership of applicant.
10. The map and lot number from the Jay Tax Assessors office that shows the location of the tract or parcel of land or structure to be subdivided.
11. A description of the current use of the tract or parcel of land or structure to be subdivided and whether it is within the jurisdiction of the Jay's Shoreland Zoning Ordinance and Floodplain Management Ordinance.
12. Total acreage of tract or parcel of land to be subdivided and the total number of lots proposed. For structures, the total square footage of the structure, the number of dwelling units proposed, and the total square footage of each dwelling unit.
13. Proposed method of sewage disposal and the results of any on-site soils investigation of the tract.

14. Proposed use of the tract or parcel of land or structure to be subdivided.
15. Proposed method of water supply system. Attach evidence of adequate ground water supply and quality submitted by a well driller or a hydro geologist familiar with the area.
16. Copies of any easement, restrictive covenants of record or other instruments on record affecting the property, including any proposed easements, restrictive covenants or other instruments to be recorded in connection with the subdivision.
17. A statement of applicant's financial and technical capability to complete the proposed subdivision improvements and to comply with the terms and conditions of this Chapter.
18. If the application constitutes a revision or amendment to a previously approved subdivision, a copy of the approved subdivision plan.
19. A copy of the approved Driveway or Entrance permit issued by the Maine Department of Transportation if a driveway or entrance will enter onto Route 4, Route 17, Route 133, Route 140, Route 156, the Maxwell Road, the Crash Road, or the Riley Road.
20. For applications containing roads, a copy of the Proposed Town Way Permit, if previously issued by the Planning Board, or, for applications proposing Private Roads, submittals requirements as outlined in §5-401(A)(6).
21. A statement concerning timber harvesting resulting in any violation of the Liquidation Harvesting Rule.
22. Municipal service impact analysis, if required by the Board.
23. The type and amount of a performance guarantee sufficient to defray all costs and expenses of the proposed infrastructure improvements resulting from the subdivision.

D. Preliminary Plan.

1. The preliminary plan for the proposed subdivision shall be submitted with five (5) copies and one copy of the plan reduced to a size of 8 1/2" by 11" to the Board and shall be embossed by a seal of a land surveyor registered in Maine with the Maine Board of Registration For Professional Land Surveyors. The surveyor shall certify that the survey is in accordance with the standards of the Maine Board of Registration For Professional Land Surveyors that the information shown on the plan has been obtained from the actual field survey on the ground, that it is correct, and that there are no encroachments either way across the property lines and no known easements except those as may be shown. The preliminary plan shall not be less than 18 inches by 24 inches and shall be drawn to a scale of 1 inch equals not more than 100 feet.
2. The preliminary plan shall include the following information:
 - a. Name of proposed subdivision; location of subdivision; name of applicant; and signature and seal of Professional Land Surveyor.
 - b. Lot/unit numbers.
 - c. Location of permanent monuments/markers and angle markers.

- d. Date, magnetic bearing date, north point and graphic map scale.
- e. Boundaries of the tract or subdivision, proposed lot lines with approximate dimensions and lot areas and total area of the tract or parcel of land to be subdivided.
- f. Location of temporary markers to enable the Board to locate each lot readily and appraise the basic lot layout in the field. At a minimum, temporary markers shall be set at all corners of survey and lot lines, including all angle points, and all subdivision perimeter survey lines shall be brushed out to make the line visible.
- g. Location of all parcels to be dedicated to public use.
- h. Names of Abutters and subdivisions. Reference to recorded subdivision plans adjacent to the project boundary, and to the name, and book and page number as recorded in the Franklin County Registry of Deeds of all abutters. This requirement may be relaxed by the Board for subdivision plan revisions submitted pursuant to Chapter 5, Section 5-306.A.4.
- i. Location of rivers, streams and brooks within or abutting the proposed subdivision, wetlands regardless of size, and areas subject to storm flooding.
- j. Location of all required soils investigation test pits.
- k. Location and size of existing or proposed structures.
- l. Location of significant wildlife habitat, archaeological sites, rare and endangered species, historic buildings and sites and scenic locations as identified in Comprehensive Plan.
- m. Location and size of any sewers and water mains and other utilities within or adjoining the subdivision; location and size of any culverts and drains.
- n. Location, names and widths of existing and proposed streets, highways, easements and rights-of-way within or adjoining the subdivision. All street names shown for proposed streets located in a subdivision shall be checked against local records to assure that none are duplicates of existing street names or so similar as to cause confusion. All roads in the subdivision shall comply with the Road Ordinance of the Town of Jay Maine.
- o. Type, location, profile and cross-section of all existing and proposed surface water drainage.
- p. The location of farmland.
- q. Location of watershed boundaries if located in the direct watershed of North, Parker, Pease, Robinson or Wilson Ponds.
- r. Location and type of any easements.
- s. Suitable space on the plan to record the date and conditions of approval, if any. This space shall be substantially similar to the following form:

APPROVED DATE: _____

NOTICE

This approval is limited to the requirements of Title 30-A M.R.S.A. Section 4401, et seq., and Chapter 5 of the Jay Environmental Control and Improvement Ordinance and the Jay Subdivision Permit recorded herewith. Roads and public open spaces shown on the Final Plan may only be accepted by a vote of the Town of Jay. This approval does not indicate compliance with any other federal, or state statutes or local ordinances.

The above Title Block and notice shall appear on all plans submitted for review and formal approval by the Board.

t. A reference to the book and page of the Board order approving the subdivision recorded in the Franklin County Registry of Deeds. The reference shall be similar to the following form:

See Town of Jay Planning Board Findings Recorded in the Franklin County Registry of Deeds in Book _____ , Page _____

E. Topographic, Soil Erosion and Phosphorus Control Plans.

1. The Topographic Plan for the subdivision shall show the topography of the tract or parcel to be subdivided at 20 foot contour intervals and shall show the location of the existing natural or man-made features influencing the layout of the subdivision. The Board may require other contour intervals if necessary to review a particular application.
2. The Soil Erosion Plan shall show the soil erosion, storm water run-off and sediment control plans for the subdivision, including how and where the applicant intends to control surface water, erosion and sediment.
3. A Phosphorus impact analysis shall be submitted if located in the direct watershed of North, Parker, Pease, Robinson or Wilson Ponds.

F. Other Information:

1. The applicant shall submit a written statement from any public utility or municipal department (including, but not limited to, where applicable, Town Sewer and Water Department, Well Drilling Company) that will service the subdivision stating that a sufficient or adequate supply of its product will be available to meet the needs of the subdivision and statements from the fire, police, recycling and transfer, highway and school departments concerning their review of the subdivision.

2. In areas where on site waste water disposal is proposed, the applicant shall submit a certification or an opinion from a licensed site evaluator which shall state that all lots proposed by the subdivision application have situated within their bounds a location suitable for a subsurface disposal system.
3. The applicant shall submit evidence demonstrating that there will be no substantial adverse effect on ground water quality, such as:
 - a. A comprehensive list, including physical and chemical characteristics and projected quantities of wastes to be disposed of or stored within the proposed development which may potentially contaminate the ground water.
 - b. Methods for preventing ground water pollution as the result of the disposal and/or storage of wastes.
 - c. An evaluation of the geological, hydrologic, and soils conditions of the development site.
 - d. Data establishing background water quality.
 - e. Proposed plan of action, and alternatives, to be followed in the event the proposed development results in ground water contamination.
4. Such other information as the Board may reasonably require pursuant to this Section and Section 5- 401, including revised submissions.
5. The applicant shall submit any other information that it determines will assist the Board in making its evaluations and its findings of the subdivision pursuant to Section 5-501.

G. Temporary Layout. The applicant shall lay out his proposed subdivision on the tract or parcel of land with sufficient temporary markings to enable the Board to make an on-site inspection of the proposed subdivision. The temporary markers shall also indicate where the permanent markers will be placed. At a minimum, temporary markers shall be set at all corners of survey and lot lines and all subdivision perimeter survey lines shall be brushed out to make the line visible.

§5-303 BOARD ACTION UPON SUBMISSION

- A. Upon receiving a subdivision application, the Board will issue the applicant a dated receipt and shall notify all Abutters by certified mail for new subdivisions and by regular mail for all amendments to previously approved plans, and the clerk and the reviewing authority of municipalities that abut or includes any portion of the proposed subdivision, specifying the location of the proposed subdivision, a general description of the project, and that abutters have five (5) days to request a public hearing. The Board will notify by mail a public drinking water supplier if the subdivision is within its source water protection area.
- B. Within thirty (30) days after receipt of an application the Board shall notify the applicant in writing either that the application is a complete application or, if the application is not complete, the specific additional information needed to make a complete application.
- C. The Board may schedule an on-site inspection of the proposed subdivision if it determines such inspection necessary to its review of the application.

- D. When the Board has determined that an application is complete, it shall issue the applicant a receipt stating the Official Submittal Date.
- E. After the Official Submittal Date, the Board shall begin its consideration and evaluation of the application and shall determine whether it will hold a public hearing. The public hearing date shall be within 30 days after the official submittal date. A public hearing, if ordered, shall be held in accordance with Chapter 3 of this Ordinance.
- F. If the Board decides to hold a public hearing, the Board shall cause notice of the date, time and place of the hearing to be given to the applicant and to be published in a newspaper of general circulation, in Jay at least two (2) times in advance of the hearing. The first date of publication shall be at least seven (7) days prior to the hearing.
- G. If any portion of a subdivision crosses municipal boundaries, all meetings and hearings to review an application shall be held jointly by the reviewing authority from the other municipality and the Board. All meetings and hearings to review an application for a revision or amendment to a subdivision that crosses municipal boundaries must be held jointly by the reviewing authorities from each municipality. In addition to other review criteria, the reviewing authorities shall consider and make a finding of fact regarding the impact on the adjoining municipality. The reviewing authorities in each municipality, upon written agreement, may waive the requirement under this subsection for any joint meeting or hearing.
- H. The Board may not accept or approve final plans or final documents prepared by a licensed professional land surveyor that are not sealed and signed by the professional land surveyor under whose responsible charge they were completed.
- I. The Board shall review all requests for subdivision approval. On all matters concerning subdivision review, the Board shall maintain a permanent record of all its meetings, proceedings and correspondence.

§5-304 BOARD ACTION AFTER A COMPLETED APPLICATION HAS BEEN SUBMITTED

- A. Within 30 days of a public hearing, or if no hearing is held, within sixty (60) days after the Official Submittal Date, or within such other time limit as has been mutually agreed by the Board and the applicant, the Board shall approve, deny, or approve upon any terms and conditions that it considers advisable to satisfy the standards in Section 5-501; satisfy any other regulations adopted by the Board; and protect and preserve the public's health, safety and general welfare.
- B. In all instances, the burden of proof shall be upon the applicant.
- C. The Board shall issue its decision in writing, stating the Boards findings of fact establishing that the application does or does not meet the provisions of this Ordinance and shall state its conclusions of law, including a plain statement of the appropriate rights for reconsideration and judicial review pursuant to Section 5-601 and the time within which rights must be exercised.

§5-305 BOARD ACTION AFTER APPROVAL OF THE PRELIMINARY APPLICATION

A. In the event that the Board approves the preliminary application, the applicant shall submit a Final Plan within 6 months after the date of the Board's approval.

B. The Final Plan:

1. Shall include all changes ordered by the Board when it approved the preliminary subdivision application.
2. Shall have no substantial changes except as provided in paragraph 1 hereof, between the preliminary plan and the final plan;
3. Shall be drawn in ink on mylar suitable for recording in the Franklin County Registry of Deeds;
4. Shall be submitted with one (1) original for recording and three (3) copies;
5. Shall include the following:
 - a. Name of proposed subdivision; location of subdivision; name of applicant; and signature and embossed seal of Professional Land Surveyor.
 - b. Lot/unit numbers.
 - c. Location of permanent monument/marker and angle markers. A minimum of two (2) Permanent Monuments shall be placed on each subdivision and permanent markers shall be set at all lot corners of the lot sold or conveyed. Angle markers shall be placed at all angles on the subdivision perimeter. Within thirty (30) days of approval, or in no event later than May 1 for approvals granted after November 15, the Applicant shall provide the Board with a letter from a professional land surveyor that all permanent monuments/markers and-angle markers have been set in the ground in accordance with the approved Final Plan.
 - d. Date, magnetic bearing date, north point and graphic map scale.
 - e. The final lot lines with dimensions bearing deflection angels, radius and control angles, sufficient to reproduce them on the ground and showing total lot acreage of each lot of the subdivision.
 - f. Location of all parcels to be dedicated to public use.
 - g. Location and type of any easements.
 - h. Location of rivers, streams, brooks and wetlands.
 - i. The boundaries of any flood hazard areas and the 100-year flood elevation. The plan shall indicate that all principle structures on lots in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation
 - j. Location of all required soils investigation test pits.

- k. Location and size of existing or proposed structures.
- l. Location, names and widths of existing and proposed streets and rights-of-way.
- m. Type and location, of all existing and proposed surface water drainage.
- n. Suitable space on the approved plan to record the date and conditions of approval, if any. This space shall be substantially similar to the following form:

APPROVED DATE:

NOTICE

This approval is limited to the requirements of Title 30-A M.R.S.A. Section 4401, et seq., and Chapter 5 of the Jay Environmental Control and Improvement Ordinance and the Jay Subdivision Permit recorded herewith. Roads and public open spaces shown on the Final Plan may only be accepted by a vote of the Town of Jay. This approval does not indicate compliance with any other federal, or state statutes or local ordinances.

The above Title Block and notice shall appear on all plans submitted for review and formal approval by the Board.

- o. A reference to the book and page of the Board order approving the subdivision recorded in the Franklin County Registry of Deeds. The reference shall be similar to the following form:

See Town of Jay Planning Board Findings Recorded in the Franklin County Registry of Deeds in Book _____ , Page _____

C. Upon approval of the Final Plan by the Board, the Board shall sign the original and three copies. The applicant shall have the original Final Plan and the Board Order approving the plan recorded in the Franklin County Registry of Deeds within ninety (90) days of approval. One signed copy shall be given to the applicant and two signed copies shall remain with the Board as part of its permanent records. The applicant shall notify the Board within ten (10) days after the recording in the Franklin County Registry of Deeds of the following: the Book and Page where the Board order is recorded, and the plan number where the Final Plan is recorded.

D. In the event that the Final Plan and the Board order are not recorded in the Registry of Deeds within ninety (90) days after the date of their signing, the approval shall automatically be void.

E. In the event the applicant fails to comply with any provision of Subsection C above, the

Board may revoke its approval of the Final Plan by filing a notice of such revocation in the Franklin County Registry of Deeds. Not less than thirty (30) days prior to filing such notice of revocation, the Board must provide an applicant with written notice of the Board's intention to file such notice of revocation.

§5-306 CONDITIONS OF JAY SUBDIVISION PERMIT

A. The Board may impose any appropriate and reasonable conditions to insure compliance with this Chapter. However, every Jay Subdivision Permit shall be subject to the following standard conditions and conditions of Chapter 3.

1. Employees and authorized representatives of the Town of Jay shall be allowed access to the premises of the permit holder during normal business and operating times and at such other times as the Board deems necessary to perform such tests and inspections and examine all records relating to the subdivision.

2. The granting of the Jay Subdivision Permit is 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 these plans, proposals, and supporting documents is subject to review and approval prior to implementation.

3. Further division of approved lots by the applicant or future owners is specifically prohibited without prior approval of the board, and the applicant shall include deed restrictions to that effect.

4. Subdivision Plan Revisions After Approval under this Ordinance or a previous ordinance: No changes, erasures, modifications or revisions including further division of approved lots by the applicant or future owners shall be made to any subdivision plan approved under a previous Jay ordinance or to a Final Plan after Final Plan approval has been granted by the Board pursuant to subsection 5-305 hereof, unless the plan is resubmitted to the Board and the Board approves such modification. In the event that a plan is recorded without complying with this requirements, the plan shall be considered null and void.

Any application for subdivision approval which constitutes a revision or amendment to a subdivision plan which has been previously approved shall indicate that fact on the application and shall identify the original subdivision plan being revised or amended, including a reference to the book and page on which the original plan is recorded.

5. Each approved lot shall have not more than one dwelling unit unless otherwise approved by the Board.

6. The applicant shall secure and comply with all applicable federal, state, and Jay licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.

7. The applicant shall submit all reports and information requested by the Board demonstrating that the applicant has complied with or will comply with all terms and conditions of the Jay Subdivision Permit. All preconstruction terms and conditions must be met before construction begins.

8. The approval by the Board of the Final Plan shall not be deemed to constitute or be evidence of any acceptance by Jay of any street, easement, or other open space shown on such Final Plan. When a park, playground, or other recreation area shall have been shown on the Final Plan to be dedicated to Jay, approval of the Final Plan shall not constitute an acceptance by Jay of such areas. The Board shall require the Final Plan to contain appropriate notes to this effect.
9. If, upon inspection, any of the required Subdivision Permit conditions have not been completed in accordance with the plans and specification filed by the Permit holder, the Board shall take such steps as are necessary to enforce such Permit and the provisions of this Chapter.
10. The permit holder shall be required to maintain all subdivision improvements and shall provide for snow removal on all streets and sidewalks of the subdivision until acceptance of such streets by the Town of Jay.
11. Any applicant issued a permit pursuant to this Chapter in the direct watershed of North, Parker, Pease, Robinson or Wilson Ponds shall have a copy of the permit on site while work authorized by the permit is being conducted.
12. Failure to commence substantial construction of the required infrastructure improvements for the subdivision within two years of the date of approval and signing of the Plan shall render the Plan null and void. A statement of this effect must appear on any final plan. Upon good cause shown, the Board may extend the approval for additional two year periods. The extension request must be made to the Board at least thirty days prior to the time of expiration. 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.

PART 4

GENERAL DESIGN GUIDELINES AND REQUIREMENT

Section

§5-401 General Design

Guidelines

§5-402 Requirements

§5-401 GENERAL DESIGN GUIDELINES

A. General Design Guidelines: The Board shall consider the following general design guidelines before granting approval of a subdivision permit application:

1. Public Water and Sewer: Where available all subdivisions shall be served by public water and sewer.

2. Buffer Strip: The Board may require a buffer strip consisting of such elements as natural vegetation, where the Board finds a buffer strip to the subdivision desirable. The Board will consider the following in establishing buffer strips.

a. Plant materials shall be a least four feet in height and be of such evergreen species that will produce ultimately a dense audio/visual screen at least eight feet in height. Alternatively, a six-foot high wooden fence, without openings wider than 1", may be substituted.

b. The buffer will be maintained permanently, and any plant material which does not live shall be replaced within one year.

c. The plantings of the buffer shall be so placed that at maturity it will be no closer than three feet from any street or property line.

d. The buffer will be broken only at points of vehicular/ pedestrian access. When the buffer is broken by pedestrian access it shall be designed to not allow direct visual access to the adjacent property.

3. Lots: Each lot in any subdivision other than a Mobile Home Park shall comply with the provisions of the minimum lot size law, Title 12 M.R.S.A. Section 4807 et seq. and with the following dimensional requirements:

a. Private septic: The minimum lot size is 40,000 square feet except for any Multiple Unit Housing, for which the minimum lot size is 20,000 square feet per dwelling unit.

b. Town Sewer: The minimum lot size is 15,000 square feet except for any Multiple Unit Housing, for which the minimum lot size is 7,500 square feet per dwelling unit.

c. Private septic: A minimum of 150 feet road frontage per lot. Town sewer: A minimum of 100 feet road frontage per lot. Road frontage shall be on a public way established by or maintained under public authority or a private right of way, the description of which is recorded

in the Franklin County Registry of Deeds.

d. Lots may be laid out on turn-arounds or cul-de-sacs with a minimum 60 feet radius. Such lots shall have a 78 feet minimum chord distance on the road.

Each lot in any Mobile Home Park subdivision shall comply with the provisions of Title 30-A M.R.S.A. Section 4358, sub. 3, and the following dimensional requirements:

a. The size of any mobile home park lot served by a public sewer system shall be a minimum of 6,500 square feet.

b. The size of any mobile home park lot with on-site subsurface waste water disposal shall be a minimum of 20,000 square feet.

c. The size of any mobile home park lot served by a central on-site subsurface waste water disposal system approved by the Department of Health and Human Services shall be a minimum of 12,000 square feet. The overall density of a mobile home park served by a central on-site subsurface waste water disposal system shall not be more than one home for every 20,000 square feet.

4. Stormwater-Management

a. Adequate provision shall be made for disposal of all stormwater generated within the subdivision and for any drained groundwater through a management system of ditches, swales, culverts, underdrains, and/or storm drains. The stormwater- management system shall be designed to conduct stormwater flows to existing watercourses or storm drains. All components of the stormwater-management system shall be designed to meet the criteria of a twenty-five-(25) year storm.

b. The stormwater 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 twenty-five (25) percent for potential increase 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 nor cause downstream erosion. The subdivider shall be responsible for financing any improvements to existing drainage systems required to handle the increased storm flows.

d. Wherever the storm-drainage system is not within the right-of-way of a public street, perpetual easements shall be provided to the town allowing maintenance and improvement of the system.

e. Where soils require a subsurface drainage system, the drains shall be installed and maintained separately from the stormwater-drainage system.

5. Erosion and Sedimentation Control: Erosion soil and sedimentation of watercourse and water bodies shall be minimized. The following measures shall be included, where applicable, as part of subdivision review and approval.

a. Stripping of vegetation, regrading or other development shall be done in such a way as to minimize erosion.

- b. Development shall keep cut-fill operations to a minimum and ensure conformity with topography so as to create the least erosion potential and so as to adequately handle surface water runoff.
- c. The disturbed area and the duration of exposure of the disturbed area shall be kept to practical minimum.
- d. Disturbed soils shall be stabilized as quickly as practical. Temporary mulch will be placed on all disturbed areas where seeding or other construction or stabilization activities will not take place for over 14 consecutive days.
- e. Temporary vegetation or mulching shall be used to protect exposed critical areas during development.
- f. The permanent (final) vegetation and structural erosion control measure shall be installed in the time periods contained in the erosion and sediment control plan.
- g. Until the disturbed area is stabilized, sediment in the runoff water shall be trapped by the use of debris basins, sediment basins, silt traps or other acceptable methods.
- h. Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the developer causing such sedimentation to remove it from all adjoining surfaces, drainage systems and watercourses and to repair any damage at his expense.
- i. Maintenance of drainage facilities or watercourses originating and completely on private property is the responsibility of the owner to the point of open discharge at the property line or at a communal watercourse within the property.
- j. The standards set forth in the Maine Erosion and Sediment Control Handbook for Construction, Best Management Practices (March 1991 and as amended) shall be employed.

6. Streets and Roads: The design and construction of all Proposed Town Ways shall be in accordance with the provisions of the Town of Jay, Maine — Town Way Ordinance. Private Roads proposed within a subdivision shall provide for, at a minimum, a Road Association comprised of property owners within the proposed subdivision. The applicant shall submit to the Planning Board for approval any of the following documents demonstrating at a minimum that the Road Association has the powers and duties to levy assessments upon its members to pay for Private Road repair, replacement and maintenance (including snow plowing); the Declaration establishing a lien process, Road Association's Articles of Incorporation, its organizing documents, its Bylaws, and/or its Operating Agreement.

The following words shall appear on any proposed subdivision plan containing a Private Road:

"All roads shall remain private, to be maintained by the developer or the lot owners and shall not be accepted or maintained by the Town of Jay until they meet the provisions of the Town Way Ordinance and are accepted by an affirmative vote at a Town meeting."

7. Groundwater Protection: The Board may impose, as a condition of subdivision approval, reasonable conditions to ensure that the proposed subdivision does not have an adverse effect on ground water quality. When appropriate, the Board may require that a subdivision ground water monitoring program be established by applicant and that regular reports be filed with the Town of

Jay at designated intervals.

8. Phosphorous Export:

a. Phosphorous export from a proposed subdivision development shall be calculated according to the procedures defined in *Phosphorous Control in Lake Watersheds: A Technical Guide for Evaluating New Development* (Maine DEP et. al., September 1989 with revision in 1992 and as may be amended). Projects proposed within the direct watershed of a pond listed below shall be designed to limit phosphorous runoff to the levels defined below. Upon request, copies of all worksheets and calculations shall be made available to the Board.

Lake Name	Protection Level	Lake Load Allocation (lbs/acre/yr) ¹
North Pond	Medium	0.050
Parker Pond	Medium	0.036
Pease Pond	Medium	0.040
Robinson Pond	Medium	0.044
Wilson Pond	Medium	0.038
Unnamed Pond (8789)	Medium	0.047
Unnamed Pond (8801)	Medium	0.044

Source: Maine Department of Environmental Protection November 8, 2010

¹Lake Watershed Load Allocation represents pounds (lbs) phosphorus per acre per year allocated to Jay's share of watershed per parts per billion (ppb).

b. Phosphorous-control measure shall meet the design criteria contained in *Phosphorous Control in Lake Watersheds: A Technical Guide for Evaluating New Development* (Maine DEP et. al., September 1989 with revision in 1992 and as may be amended). The Board shall require the reasonable use of vegetative buffers, limits on clearing, and minimal road lengths and shall encourage the use of other nonstructural measures prior to allowing the use of high-maintenance structural measures such as infiltration systems and wet ponds. Where buffers can be designed and maintained to remove 75% of the phosphorus in accordance with Table 6.1 of Stormwater Management for Maine: Best Management Practices, it will be assumed that the project meets this standard.

- 9. Protection of Significant Wildlife Habitat:** Applicants proposing to subdivide land in or within seventy-five (75) feet of significant wildlife resources identified by the Maine Department of Inland Fisheries and Wildlife shall consult with a recognized wildlife or fisheries consultant or the Maine Department of Inland Fisheries and Wildlife and provide their written comments to the Board. The Board shall consider any recommended measures provided to minimize impacts on such habitats. Any conditions to the approval to wildlife or fisheries habitat preservation shall appear on the plan and as deed restrictions to the affected lots.

§5-402 REQUIREMENTS

A. Conformance with Other Laws, Regulations: The proposed subdivision shall be in conformance with all applicable Jay, state and federal ordinances, statutes, and regulations. If the proposed subdivision meets the definition of a subdivision as defined in the Site Location Act, Title 38 M.R.S.A., Section 482, as amended, the applicant must secure the approval of the M.D.E.P. and the Board prior to any construction activity constituting a division of the tract or structure.

B. Phasing of Development: At the time the Board grants Final Plan approval, it may require the Plan to be divided into two or more sections subject to any conditions the Board deems necessary when it determines that police, fire and/or capacity will be exceeded.

C. Performance Bonds and Letters of Credit:

1. Prior to approval of the subdivision, the Board may require an applicant to file a performance guarantee with the Board in an amount sufficient to defray all costs and expenses of the proposed public improvements resulting from the subdivision. Such performance guarantee may be tendered in the form of a certified check payable to the Town of Jay, or a letter of credit payable to the Town of Jay or a performance bond running to the Town of Jay and issued by a surety company acceptable to the Town of Jay. The conditions and amount of such certified check, letter of credit or performance bond shall be established by the Board and which shall be in an amount not less than the total cost of furnishing, installing, connecting and otherwise completing all of the necessary street grading, paving, storm drainage, and utilities, including other infrastructure improvements specified on the Final Plan.

2. The Board may grant an extension of not greater than twelve (12) months to the guaranteed performance period upon petition from the applicant demonstrating good cause for such extension. The extension request must be made to the Board at least thirty days prior to the time of expiration.

3. Before an applicant may be released from its guarantee of performance as provided hereunder, the Board shall require certification from the municipal officers with jurisdiction over any aspect of the applicant's infrastructure improvements, that all improvements have been completed in accordance with all applicable standards (including state, federal and Jay codes, ordinances, laws and regulations).

4. The Board may, at its discretion, waive the requirement of a performance guarantee provided that no lot in the subdivision may be sold until it shall have been certified, in the manner set forth in Subsection 3 above, that all infrastructure improvements have been made. The Board, in consultation with the applicant, shall set a reasonable completion date for the improvements, and the subdivision approval shall be voided if such improvements are not completed within the specified time. The Board may, upon request from the applicant, extend the completion date as provided in subsection 2 above. The Board shall have the discretion of withholding approval of the Final Plan until all improvements are completed in accordance with subsection 3 above.

PART 5

APPROVAL-STANDARDS

Section

§5-501 Standards

§5-501 STANDARDS

The Board shall approve, deny, or approve with conditions, all applications for subdivisions in accordance with the provisions of this chapter. After submission of a completed application, the Board shall approve an application or approve it with conditions if the Board makes a positive finding based on the following criteria:

A. Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:

1. The elevation of the land above sea level and its relation to the flood plains;
2. The nature of soils and subsoils and their ability to adequately support waste disposal;
3. The slope of the land and its effect on effluents;
4. The availability of streams for disposal of effluents; and
5. The applicable state and local health and water resource rules and regulations;

B. Sufficient water. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;

C. Municipal water supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;

D. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

E. Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of an urban compact municipality as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section;

F. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;

G. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;

H. Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the Town of Jay, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline; In making this determination the Board shall consider.

1. Maps and information provided by the Maine Historic Preservation Commission
2. Maps and information provided by the Maine Beginning with Habitat program into their review process.

I. Conformity with local ordinances and plans. The proposed subdivision conforms with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the Board may interpret these ordinances and plans;

J. Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section;

K. Surface waters. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

L. Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;

M. Flood areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;

N. Freshwater wetlands. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;

O. River, stream or brook. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9;

P. Storm water. The proposed subdivision will provide for adequate storm water management;

Q. Spaghetti-lots prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or wetland as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;

R. Lake phosphorus concentration. The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision;

S. Impact on adjoining municipality. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located; and

T. Lands subject to liquidation harvesting. Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, Board must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. The Board may request technical assistance from the Department of Conservation, Bureau of Forestry to determine whether a rule violation has occurred, or the Board may accept a determination certified by a forester licensed pursuant to Title 32, chapter 76. If the Board requests technical assistance from the bureau, the bureau shall respond within 5 working days regarding its ability to provide assistance. If the bureau agrees to provide assistance, it shall make a finding and determination as to whether a rule violation has occurred. The bureau shall provide a written copy of its finding and determination to the Board within 30 days of receipt of the Board's request. If the bureau notifies the Board that the bureau will not provide assistance, the Board may require a subdivision applicant to provide a determination certified by a licensed forester.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in Title 12, section 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership.

U. Farmland. All farmland within the proposed subdivision has been identified on maps submitted as part of the application. Any mapping of farmland may be done with the help of the local soil and water conservation district.

PART 6

APPEALS, VIOLATIONS, PENALTIES AND WAIVERS

§5-601 Appeals

§5-602 Violations and Penalties

§5-603 Waivers

§5-601 APPEALS

Any aggrieved party may appeal a decision of the Board with respect to the issuance of a Jay Subdivision Permit in accordance with the procedures outlined in Chapter 3 of this Ordinance.

§5-602 VIOLATIONS AND PENALTIES

Any violation of this Chapter shall be subject to penalties in accordance with Chapter 4B of this Ordinance.

§5-603 WAIVERS

Where the Board makes written findings of fact that extraordinary and unnecessary hardships may result to an applicant from strict compliance with this Chapter or that there are special circumstances of a particular tract or parcel of land or structure proposed to be subdivided, it may waive portions of the General Guidelines and Requirements, Submissions Requirements or the Standards of this Chapter in order to permit a subdivision, provided that the public health, safety, and welfare are protected, and provided that the waivers do not have the general effect of nullifying the intent and purpose of this Chapter. In granting waivers, the Board shall require such conditions consistent with the objectives of this Chapter. In accordance with 30-A M.R.S.A. Section 4406(1)(B), any such waiver shall be noted on the Final Plan.

THE TOWN OF JAY TRAFFIC ORDINANCE

AS ADOPTED AUGUST 16, 1967 INCLUDES ALL AMENDMENTS

VOTED ON JULY 25, 1988 - TOWN OF JAY, SELECTMEN'S MEETING

An ordinance regulating traffic upon public streets of the Town of Jay and repealing ordinance No. 1 through 17 and all other ordinances and sections of ordinances in conflict herewith,

It is ordained by the board of Selectmen as follows:

ARTICLE 1

WORDS AND PHRASES DEFINED

Sec. 1-1 Definition of words and phrases.

The following words and phrases when used in this ordinance shall for the purpose of this ordinance have the meanings respectively ascribed to them in this article.

Sec. 1-2 Authorized emergency vehicle.

Vehicles of the fire department (fire patrol), police vehicles and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the chief of police of this town.

Sec. 1-3 Bicycle.

Every device propelled by human power upon which any person may *ride*, having two tandem wheels either of which is more than 20 inches in diameter.

Sec. 1-4 Commercial vehicle.

Every vehicle designed, maintained, or used primarily for the transportation of property.

Sec. 1-5 Cross Walk.

(a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or in the absence of curbs from the edges of the traversable roadway.

(b) Any portion of a roadway at an intersection **or** elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

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Sec. 1-6 Curb loading zone.

A space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.

Sec. 1-7 Driver.

Every person who drives or is in actual physical control of a vehicle.

Sec. 1-8 Highway.

The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Sec. 1-9 Intersection.

(a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

Sec. 1-10 Motor vehicle.

Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

Sec. 1-11 Motorcycle.

Every motorcycle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

Sec. 1-12 Official time standard.

Whenever certain hours are named herein they shall mean

standard time or daylight-savings time as may be in current use in this town.

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Sec. 1-13 Official traffic-control devices. All signs, signals, markings and devices not inconsistent with this ordinance placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

Sec. 1-14 Park or parking.

Means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while engaged in loading or unloading merchandise or passengers.

Sec. 1-15 Passenger curb loading zone.

A place adjacent to a curb reserved for the exclusive **use** of vehicles during the loading or unloading of passengers.

Sec. 1-16 Pedestrian.

Any person afoot.

Sec. 1-17 Person.

Every natural person, firm, copartnership, association or corporation.

Sec. 1-18 Police officer.

Every officer of the municipal police department of **any** officer authorized to direct traffic or to make arrests for violations of the traffic regulations.

Sec. 1-19 Private road or driveway.

Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Sec. 1-20 Railroad.

A carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

Sec. 1-21 Railroad train.

A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

Sec. 1-22 Right of Way.

The right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to

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give rise to danger of collision unless one grants precedence to the other.

Sec. 1-23 Roadway.

That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the even a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

Sec. 1-24 Sidewalk.

That portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

Sec. 1-25 Stand or standing.

Means the halting of a vehicle, whether occupied or not, otherwise than for the purpose of and while actually engaged in receiving or discharging passengers.

Sec. 1-26 Stop.

When required means complete cessation from movement.

Sec. 1-27 Stop or stopping.

When prohibited means any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

Sec. 1-28 Street or highway.

The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for the purposes of vehicular travel.

Sec. 1-29 Through highway.

Every highway or portion thereof on which vehicular traffic is given preferential right of way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield right of way to vehicles on such through highway in obedience to either a stop sign or a yield sign, when such signs are erected as provided in this ordinance.

Sec. 1-30 Traffic.

Pedestrians, ridden or herded animals, vehicles, streetcars and other conveyance either singly or together while using any

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highway for purposes of travel.

Sec. 1-31 Traffic-control signal.

Any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

Sec. 1-32 Vehicle.

Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

ARTICLE II

ENFORCEMENT AND OBEDIENCE TO TRAFFIC REGULATIONS

Sec. 2-1 Authority of police and fire department officials.

(a) It shall be the duty of the officers of the police department or such officers as are assigned by the chief of police to enforce all street traffic laws of this town and all State vehicles laws applicable to street traffic in this town.

(b) Officers of the police department or such officers as are assigned by the chief of police are hereby authorized to direct all traffic by voice, hand, or signal in conformance with traffic laws, provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require notwithstanding the provisions of the traffic laws.

(c) Officers of the fire department, when at the scene of a fire, may direct or assist the police in directing traffic there at or in the immediate vicinity.

Sec. 2-2A Required obedience to traffic ordinance.

It is a misdemeanor for any person to do any act forbidden or fail to perform any set required in this ordinance.

Sec. 2-2B Obedience to police and fire department officials.

No person shall willfully fail to comply with any lawful order or direction of a police officer or fire department official.

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sec. 2-3 Persons propelling push carts or riding animals to obey traffic regulations.

Every person propelling any push cart or riding an animal upon a roadway, and every person driving any animal-drawn vehicle, shall be subject to the provisions of this ordinance applicable to the driver of any vehicle, except those provisions of this ordinance which by their very nature can have no application.

Sec. 2-4 Use of coasters, roller skates and similar devices restricted.

No person upon roller skates, or riding in or by means of an^ coaster, toy vehicle, or similar device, shall go upon any roadway except while crossing a street on a cross walk and when so crossing such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. This section shall no apply upon any street while set aside as a play street as authorized by ordinance of this town.

Sec. 2-5 Public employees to obey traffic regulations.

The provisions of this ordinance shall apply to the driver *oi* any vehicle owned by or used in the service of the United States Government, this State, county, or the Town of Jay, and it shall be unlawful for any said driver to violate any of the provisions of this ordinance, except ass otherwise permitted in this ordinance or by State statute.

Sec. 2-6 Authorized emergency vehicles.

(a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle may:

1. Park or stand, irrespective of the provisions of this ordinance;
2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
3. Exceed the maximum speed limits so long as he does not endanger life or property;
4. Disregard regulation governing direction of movement or turning in specified directions.

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(c) me exemptions herein granted to an authorized emergence

vehicle shall apply only when the driver of any said vehicle while in motion sounds audible signal by bell or siren as may be reasonably necessary and then the vehicle is equipped with at least one lighted lamp displaying a red or blue light visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle, except than an authorized vehicle operated as a police vehicle need not be equipped with or display a blue light visible from in front of the vehicle.

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with the regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

Sec. 2-7 Operation of a vehicle on approach of authorized emergency vehicles.

(a) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of the laws of this State, or of a police vehicle property and lawfully making use of an audible signal only:

1. The driver of every other shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

ARTICLE III
TRAFFIC CONTROL DEVICES

Sec. 3-1 Authority to establish play streets.

The town manager shall have the authority to declare any streets or part thereof a play street and to place appropriate signs or devices in the roadway indicating and helping to protect the same.

Sec. 3-2 Play streets.

Whenever authorized signs are erected indicating any street or part thereof as a play street, no person shall drive a vehicle upon any such street or portion thereof except drivers of

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vehicles having business or whose residence are within such closed area, and then any said driver shall exercise the greatest care in driving upon any such street or portion thereof.

ARTICLE IV

STOP AND YIELD INTERSECTIONS, RAILROAD CROSSINGS, ETC.
Sec. 4-1 Signs required at through streets.

Whenever any ordinance of this town designates and describes a through street it shall be the duty of the town manager to place and maintain a stop sign, or on the basis of an engineering and traffic investigation at any intersection a yield sign, on each and every street intersecting such through street unless traffic at any such intersection is controlled at all times by traffic-control signals, provided, however, that at the intersection of two such through streets or at the intersection of a through street and a heavy traffic street not so designated, stop signs shall be erected at the approaches of either of said streets as may be determined by the town manager upon the basis of an engineering and traffic study.

Sec. 4-2 Other intersections where stop or yield required.

The town manager is hereby authorized to determine and designate intersections where particular hazard exists upon other than through streets and to determine (a) whether vehicles shall stop at one or more entrances to any such intersection, in which event he shall cause to be erected a stop sign at every place where a stop is required, or (b) whether vehicles shall yield the right of way to vehicles on a different street at such intersection in which event he shall cause to be erected a yield sign at every place where obedience thereto is required.

Sec. 4-3 Stop signs and yield signs.

(a) The driver of a vehicle approaching a yield sign if required for safety to stop shall stop before entering the cross walk on the near side of the intersection, or in the event there is no cross-walk, at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

(b) Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the cross walk on the near side of the intersection, in the event there is not cross walk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.

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Sec. 4-4 Vehicle entering stop intersection.

Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop as required by Sec. 4-3(b) and after having stopped shall yield right of way

to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

Sec. 4-5 Vehicle entering yield intersection.

The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and shall yield the right of way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection; provided, however, that if such a driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield right of way.

Sec. 4-6 Emerging from alley, driveway or building.

The driver of a vehicle within a business or residence district emerging from an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway, and shall yield the right of way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right of way to all vehicles approaching on said roadway.

Sec. 4-7 Stop when traffic obstructed.

No driver shall enter an intersection or a marked cross walk unless there is sufficient space on the other side of the intersection or cross walk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indicating to proceed.

ARTICLE V

MISCELLANEOUS DRIVING RULES

Sec. 5-1 Following fire apparatus prohibited.

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than 500 feet or drive into or park such

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vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

Sec. 5-2 Crossing fire hose.

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or private driveway, to be used at any fire or alarm of fire, without the consent of

the fire department official in command.

Sec. 5-3 Driving through funeral or other procession.

No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated as required in this ordinance. This provision shall not apply at intersections where traffic is controlled by traffic-control signals or police officers.

Sec. 5-4 Drivers in a procession.

Each driver in a funeral or other procession shall drive as near to the right hand edge of the roadway as practicable and shall follow the vehicle ahead as close as is practicable and safe.

Sec. 5-5 Funeral processions to be identified.

A funeral composed of a procession of vehicles shall be identified as such by the display upon the outside of each vehicle as a pennant or other identifying insignia or by such other method as may be determined and designated by the traffic division.

Sec. 5-6 When permits required for parades and processions.

No procession or parade containing 5 or more persons or 3 or more vehicles except the forces of the United States Army or Navy, the military forces of this State and the forces of the police and fire departments, shall occupy, march or proceed along any street except in accordance with a permit issued by the chief of police and such other regulations as are set forth herein which may apply.

Sec. 5-7 Vehicle shall not be driven on a sidewalk.

The driver of a vehicle shall not drive within any sidewalk area except at a permanent or temporary driveway.

Sec. 5-8 Limitations on backing.

The driver of a vehicle shall not back: the same unless such movement can be made with reasonable safety and without

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interfering with other traffic.

Sec. 5-9 Opening and closing vehicle doors.

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a motor vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

Sec. 5-10 Riding on motorcycles.

A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent seat if designed for two persons, or upon another seat firmly attached to the rear or side of the operator.

Sec. 5-11 Clinging to vehicles.

No person riding upon any bicycle, coaster, roller skates, sled or toy vehicles shall attach the same or himself to any vehicle upon a roadway.

Sec. 5-12 Loud, unusual, or unnecessary noise.

No person shall operate a motor vehicle, on any way, in such a manner as to permit any loud, unusual, or unnecessary noise with the tires of said vehicle.

ARTICLE VI
METHOD OF PARKING

Sec. 6-1 Parallel parking or stopping.

No vehicle shall be stopped or parked in a roadway other than parallel with the edge or curb of the roadway, headed in the direction of traffic, and with the curb-side wheels of the vehicle within twelve (12) inches of the edge or curb of the roadway, except upon those streets which have been marked or signed for angle parking, in which event vehicles shall be parked at the angle to the curb indicated by such marks or signs.
Amended 10/1/84.

Sec. 6-2 Signs or markings indicating angle parking.

(a) The Town manager shall determine upon what streets angle parking shall be permitted and shall mark or sign such streets but such angle parking shall not be indicated upon any Federal-aid or State highway within this town unless the State highway

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commission has determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(b) Angle parking shall not be indicated or permitted at any place where passing traffic would thereby be caused or required to drive upon the left side of the street.

Sec. 6-3 Obedience to angle-parking signs or markings.

On those streets which have been signed or marked by the Town manager for angle parking, no person shall park or stand a vehicle other than at the angle curb or edge of the roadway

indicated by such signs or markings.

Sec. 6-4 Lamps on parked vehicles.

(a) Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half hour after sunset and a half hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of 500 feet upon such street or highway no lights need be displayed upon such parked vehicle.

(b) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between a half hour after sunset and half hour before sunrise and there is not sufficient light to reveal any person or object within a distance of 500 feet upon such highway, such vehicle so parked or stopped shall be equipped with one or more lamps meeting the following requirements: At least one lamp shall display a white or amber light visible from a distance of 500 feet to the front of the vehicle, and the same lamp or at least one other lamp shall display a red light visible from a distance of 500 feet to the rear of the vehicle, and the location of said lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motor driven cycle.

(c) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

ARTICLE VII

STOPPING, STANDING OR PARKING PROHIBITED IN SPECIFIED PLACES

Sec. 7-1 Stopping, standing or parking prohibited.

(a) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

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Stop, stand or park a vehicle:

a. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

b. On a sidewalk;

c. Within an intersection;

d. On a cross walk;

e. Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

f. Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

g. On any railroad tracks;

h. At any place where official signs prohibit stopping.

Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

a. In front of a public or private driveway;

b. Within 15 feet of a fire hydrant;

c. Within 10 feet of cross walk at an intersection;

d. Within 10 feet upon the approach to any stop sign or traffic-control signal located at the side of a roadway;

e. Within 20 feet of the driveway entrance to *any* fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance.

Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers:

a. At any place where official signs prohibit parking.

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(b) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such a distance as is unlawful.

Sec. 7-2 Parking not to obstruct traffic.

No person shall park any vehicle upon a street, other than an alley, in such a manner or under such conditions as to leave available less than 10 feet of the width of the roadway for free movement of vehicular traffic.

Sec. 7-3 Winter parking.

No person shall park a vehicle on any street for a period of time longer than 30 minutes between the hours of midnight and 6:00 a.m. of any day from November 1 to April 15 inclusive, except physicians on emergency calls.

Sec. 7-4 Parking for certain purposes prohibited.

No person shall park a vehicle upon any roadway for the principal purpose of:

1. Displaying such a vehicle for sale.
2. Washing, greasing or repairing such vehicle except repairs necessitated by an emergency.

Sec. 7-5 Parking prohibited on narrow streets.

(a) The Town manager is hereby authorized to erect signs indicating no parking upon one side of a street as indicated by such signs when the width of the roadway does not exceed 30 feet.

(b) When official signs prohibiting parking are erected upon narrow streets as authorized herein, no person shall park a vehicle upon any such street in violation of any such sign.

Sec. 7-6 Standing or parking on one-way streets.

The Town manager is authorized to erect signs upon the left-hand side of any one-way street to prohibit the standing or parking of vehicles, and when such signs are in place, no person shall stand or park a vehicle upon such left-hand side in violation of any such sign.

Sec. 7-7 Standing or parking on one-way roadways.

In the event a highway includes two or more separate roadways and traffic is restricted to one direction upon any such roadway, no person shall stand or park a vehicle upon the left-hand side of such one-way roadway unless signs are erected to permit such standing or parking. The town manager is authorized to determine

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when standing or parking may be permitted upon the left-hand side of any such one-way roadway and to erect signs giving notice thereof.

Sec. 7-8 No stopping, standing or parking near hazardous or congested places; vehicles found in such places towed or booted.

The town manager is hereby authorized to designate by proper signs certain areas wherein the stopping, standing or parking of vehicles would create especially hazardous conditions or would usually delay or severely impede the flow of traffic. If a vehicle is found stopped, standing or parked in such areas, the Chief of Police is hereby authorized to impound or, at his discretion, immobilize the violating vehicle in accordance with Sections 9A-1 - 9A-6 of this ordinance.

(A) The signs required by this section shall be marked with the words "No parking-tow-away-zone" in letters reasonably

readable from a vehicle.

(B) The presence of such signs as required by this section shall constitute notice to all persons that vehicles will be impounded or immobilized if found in violation of this section.
Amended 10/1/84.

ARTICLE VIII

STOPPING, STANDING, OR PARKING RESTRICTED OR PROHIBITED ON CERTAIN STREETS

Sec. 8-1 Application of article.

The provision of this article prohibiting the standing or parking of a vehicle shall apply at all times or at those times herein specified or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic-control device.

Sec. 8-2 Regulations not exclusive.

The provisions of this article imposing a time limit on parking shall not relieve any person from the duty to observe other and more restricting provisions prohibiting or limiting the stopping, standing or parking of vehicles in specified places or at specified times.

Sec. 8-3 Parking time limited on certain streets.

When signs are erected in each block giving notice thereof, no person shall park a vehicle for longer than 1 hour at any time between the hours of 6:00 a.m. and 8:00 p.m. of any day except Sundays and public holidays within the district or upon any of

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the streets described.

Sec. 8-4 Parking signs required.

Whenever by this or any other ordinance of this town any parking time limit is imposed or parking is prohibited on designated streets it shall be the duty of the town manager to erect appropriate signs giving notice thereof and no such regulations shall be effective unless said signs are erected and in place at the time of any alleged offense.

ARTICLE IX

PENALTIES AND PROCEDURE ON ARREST Sec. 9-1 Citation on Illegally Parked, Unoccupied Vehicles

Whenever an officer finds any motor vehicle parked or stopped in violation of any of the provisions of this ordinance or of any

provisions of State law, such officer shall:

(A) conspicuously affix to the vehicle a traffic citation on a form to be approved by the town manager. The citation shall identify the registration number of the vehicle and shall specify the violation committed; and

(B) take the registration of the vehicle together with any other information displayed on the vehicle which may identify its owner. The officer shall cause the registration number of the vehicle to be taken in such manner that it is not lost.

Sec. 9-2(A) General penalty for violation of ordinance.

Whoever shall be guilty of violating any provision of this ordinance shall be liable in a civil action for a fine not exceeding five hundred dollars (\$500.00), to be recovered for the use of the town on complaint or by other appropriate action before the district court. The selectmen shall by resolution determine the fine for each specific violation of this ordinance.

(B) Waiver fees.

In lieu of court action to recover the fine specified in Section 9-2(A) above, a person violating any provision of this ordinance may, if a summons has not been issued, elect to pay the appropriate waiver fee. Waiver fees may be set by resolution of the selectmen.

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Sec. 9-3 Presumption in reference to illegal parking.

In any prosecution charging a violation of this ordinance or any law governing the stopping, standing or parking of a vehicle, the fact that a vehicle is unlawfully parked shall constitute prima facie evidence of the parking of such vehicle by the registered owner thereof.

Sec. 9-4 Authority to impound vehicles.

(A) Members of the police department are hereby authorized to remove a vehicle from a street or highway to the nearest garage or other place of safety, or to a garage designated or maintained by the police department, or otherwise maintained by this town under the circumstances hereinafter enumerated.

(1) When any vehicle is left unattended upon any bridge, viaduct, or causeway, or in any tube or tunnel where such vehicle constitutes an obstruction to traffic.

(2) When a vehicle upon a highway is so disabled as to constitute an obstruction to traffic and the person

or persons in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal.

(3) When any vehicle is left unattended upon a street and is so parked illegally as to constitute a definite hazard or obstruction to the normal movement of traffic.

(4) When any vehicle has accumulated the number of outstanding parking violations specified in Section 9A-2.

(B) Whenever an officer removes a vehicles from a street as authorized by this section and the officer knows or is able to ascertain from the registration records in the vehicle the name and address of the owner thereof, such officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal and the reasons therefor and the place to which such vehicle has been removed.

Sec. 9-5 Disposition of waiver fees and forfeitures.

All waiver fees or fines collected as a result of any violation of this ordinance shall be paid into the town treasury.
Amended 10/1/84.

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ARTICLE IX-A

HABITUAL PARKING OFFENDERS Sec. 9A-1 Definitions

(A) Vehicle boot: A vehicle boot is a device consisting of metal clamps or jaws and screws and a padlock which immobilizes a motor vehicle when attached to a wheel.

(B) Outstanding parking ticket: An outstanding parking ticket is any notice of a violation of any provision of this ordinance, as evidenced by the issuance of a citation to the violator, where there has been neither payment of waiver fees nor issuance of court process.

Sec. 9A-2 Applicability of this article

Any vehicle which has accumulated three (3) or more outstanding parking tickets and which is found parked in violation of any provision of this ordinance shall be impounded in accordance with Section 9-4 or, at the option of the officer, shall be immobilized with a vehicle boot until the requirements of Section 9A-4 are met. If a vehicle boot is used, a fee for its use, equal to the charge for towing, shall be charged and paid before the vehicle may be released.

Sec. 9A-3 Notice

(A) When a vehicle is towed pursuant to this ordinance, the Chief of Police shall notify by registered mail the owner of the vehicle within three (3) business days of the towing thereof. Such notice shall specify where the vehicle is stored and shall set forth the requirements for release as specified in Section 9A-4.

(B) When a vehicle is immobilized with a vehicle boot, the attachment of the vehicle boot to the vehicle constitutes notice to the owner that the vehicle has been impounded.

Sec. 9A-4 Release of vehicle.

(A) The vehicle shall not be released until:

(1) The Chief of Police determines and certifies that

the individual requesting release of the vehicle is the owner thereof; and

(2) The Chief of Police certifies that all waiver fees and towing or immobilization charges have been paid, or

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(B) In lieu of paying waiver fees and towing or impoundment charges, a violator may post bond in cash in an amount equal to all such charges, whereupon the vehicle shall be released. Such bond money shall be refunded to the owner of the vehicle upon acceptance by such owner of service of process initiating court proceedings to determine whether he or she is liable for the violations as charged.

Sec. 9A-5 Refund of immobilization or impoundment charges.

Immobilization or impoundment and towing charges shall be refunded to a person when a court of competent jurisdiction determines that the vehicle owned by such person was not parked in violation of this ordinance.

Sec. 9A-6 Interference with enforcement.

It shall be unlawful for any person to tamper with or attempt to remove any vehicle boot attached to a vehicle or to attempt to prevent the impoundment of a vehicle. Amended 10/1/84.

ARTICLE X**EFFECT OF AND SHORT TITLE OF ORDINANCE**

Sec. 10-1 Effect of ordinance.

If any part of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

Sec. 10-2 Repeal.

Ordinance No. 1 through 17, the former traffic ordinance of the town of Jay is hereby repealed, and all ordinance or parts of ordinances in conflict with or inconsistent with the provisions of this ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby prior to the taking effect of this ordinance.

Sec. 10-3 Publication of ordinance.

The town clerk shall certify to the passage of this ordinance and cause the same to be published.

Sec. 10-4 Short title.

This ordinance may be known and cited as the traffic ordinance.

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Sec. 10-5 Effective date.

This ordinance shall take effect from and after the date of hearing, August 16, 1967.

ARTICLE XI
SCHEDULES OF DESIGNATED STREETS REFERRED TO IN ORDINANCE

Sec. 11-1 Parking prohibited at all times on certain streets.

SCHEDULE I

When signs are erected giving notice thereof no person shall at any time park a vehicle upon any of the following described streets or parts of streets:

No parking of the easterly side of the Riley Road commencing from the bridge to the road termination.

No parking on the westerly side of the Riley Road from the entrance to Androscoggin Mill to the termination.

No parking on the south side of Otis Street.
No parking on the south side of Maple Street.
No parking on Sunset Avenue.
No parking on the south side of Jewell Street.

No parking on the easterly side of Main Street from Jewell

Street to the Monkey bridge, so called, except in specially designated spaces.

No parking on the northerly and westerly side of Dubord Street.

No parking on either side of Knapp Street from Church Street to Jewell Street.

No parking on the south side of the Old Jay Road from Pole #82 for a distance of .3 miles to Pole #93.

No parking on the easterly side of Pine Street.

No parking on the south side of Elm Street commencing from Main Street to Western Avenue.

No parking on the south side of the Hyde Road.

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No parking on the easterly side of Route #133 opposite Pole #29-31 or near the residence of Albert Landry to the Livermore Falls Town line.

No parking on the westerly side of Route 4, Main Street, Chisholm from CMP Pole #21 continuing north westerly approximately 75 feet to MCRR tracks. (Amended 6/4/84).

SCHEDULE II

Parking time limited on certain streets.

In accordance with section 8-3, and when signs are erected giving notice thereof, no person shall stop, stand, or park a vehicle between the hours specified herein of any day except Sundays and public holidays within the district or upon any of the streets or parts of streets as follows:

(a) There shall be one hour parking on the easterly

side of Main Street from the Livermore Falls town line to Church Street and from Church Street to two car lengths from Jewell Street. There shall be no parking on either side of Jewell Street from Central Maine Power Co. Pole #13 and Pole #15. Added 7/26/72.

(b) There shall be no parking on the easterly side of the Riley Road from the bridge to NET&T Pole #23. There shall be one hour parking on the easterly side of the Riley Road from NET&T Pole 22 to NET&T Pole 25 between the hours of 6:00 a.m. and 8:00 a.m. There shall be no parking between Pole #23 and Pole #26 the remainder of the day. No parking on the westerly side of the Riley Road commencing from the bridge to the road termination. Added 9/12/72.

(c) No vehicle shall be parked more than two hours,

from 6:00 a.m. on the west side of Main Street in Chisholm, from Dubord's Market to the town line of Liver-more Falls.

No vehicle shall be parked on the south side of Jewell Street in Chisholm, from Main Street to Horan Street'.

No vehicle shall be parked within eight feet of a fire hydrant in the Town of Jay.

No vehicle shall be parked on town property, from 6:00 p.m. to 6:00 a.m. in the Town of Jay, without permission.

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Church Street shall be a one-way street in a westerly direction from Horan Street to Main Street each Sunday from 7:00 a.m. until noon.

No motor vehicle shall be parked on Jewell Street between Horan and Main Streets from 8:00 a.m. until 4:00 p.m. Amended 1/1/78.

Parking is limited to 15 minutes from 6:00 p.m. to 6:00 a.m. on the west side of Main Street (in Chisholm Square, so called) from the entrance way to James River Company to the Central Maine Power Company Pole Number 23. Amended 7/25/88.

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Parking (Enacted February 4th, 2002)

No Parking on Hillsdale Road in front of A. Maurais & Sons

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Parking Amendments

- Enacted February 4 th , 2002 at the Board of Selectmen's meeting (minutes attached)

No Parking on Hillsdale Road in front of A. Maurais & Sons

- Enacted June 9 th , 2003 at the Board of Selectmen's meeting (minutes attached)

No parking along Main Street from CN Brown to Franchetti's Hometown Variety

- Enacted May 10 th , 2004 at the Board of Selectmen's meeting (minutes attached)

No parking of tractor trailers in front of the St. Rose Church and the Veterans Memorial in Chisholm.

- Enacted March 24 th , 2009 by the Town manager per Sec.7-5(a)

No parking shall be allowed from CN Brown to CMP pole #25 just before Smiley's Laundry Mat on the westerly side of Route 4 (Main Street). This is a change to Amendment #2 and will be revoked once Smiley's obtains its own parking lot.

Parking Amendments

- 1) Enacted February 4 th , 2002 at the Board of Selectmen's meeting (minutes attached)

No Parking on Hillsdale Road in front of A. Maurais & Sons

- 2) Enacted June 9 th , 2003 at the Board of Selectmen's meeting (minutes attached)

No parking along Main Street from CN Brown to Franchetti's Hometown Variety

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No parking of tractor trailers in front of the St. Rose Church and the Veterans Memorial in Chisholm.

- 4) Enacted March 24 th , 2009 by the Town manager per Sec.7-5(a)

No parking shall be allowed from CN Brown to CMP pole #25 just before Smiley's Laundry Mat on the westerly side of Route 4 (Main Street). This is a change to Amendment #2 and will be revoked once Smiley's obtains its own parking lot.

- 5) Enacted October 24, 2011 at the Board of Selectmen's Meeting (see attached)

Otis St. is classified as a Dead End Street terminated at the junction of Pine St. Otis Street is closed to thru traffic with the exception of Emergency Vehicles including Municipal Snow Removal Equipment.

ORDINANCE RESTRICTING VEHICLE WEIGHT ON POSTED WAYS

This edition contains amendments through the Ordinance Restricting Vehicle Weight on Posted Ways, enacted January 7, 2002

ORDINANCE RESTRICTING VEHICLE WEIGHT ON POSTED WAYS

Section 1. Purpose and Authority

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The Town of Jay has the obligation to repair and to keep open all Town ways and bridges so that the Town ways and bridges are safe and convenient for travelers with motor vehicles. Anyone who damages a Town way or bridge shall be liable to the Town for a fine and to reimburse the Town for the costs expended in repairing any damage.

The purpose of this ordinance is to prevent damage to town ways and bridges in the Town of Jay which may be caused by vehicles of excessive weight, to lessen safety hazards and the risk of injury to the traveling public, 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

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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

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The Selectmen 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. When the weather conditions are such that the Town ways and bridges can be damaged by certain vehicles travelling upon them, the Road Commissioner may immediately impose such restrictions on the gross registered weight of vehicles as may, in his judgment, be necessary to protect the Town ways and

bridges. After imposing such conditions, the Road Commissioner shall designate by posting as herein provided, the Town ways or bridges to which the restrictions shall apply. In the event that Road Commissioner takes such action, the Selectmen shall at their next regularly scheduled meeting or at a special Selectmen's meeting called for this purpose either confirm or rescind or modify such restrictions as they deem necessary.

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 Selectmen or the Road Commissioner.

When a Town way or bridge has been posted hereunder such restriction shall not apply when the Town way or bridge is Solidly Frozen. A Town Way or bridge is considered Solidly Frozen 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. Any person who travels on a posted road or bridge with a vehicle in excess of the posted limits shall, in the event of damage to the road or bridge, be required to reimburse the Town of Jay for any and all amounts expended to repair the road or bridge on account of such travel, including without limitation, attorney's fees and court costs. A person wishing to travel on a posted road or bridge and believes that the roads or bridge is Solidly Frozen may ask the Road Commissioner for a determination. However, in any event, any person damaging the Town road or bridge shall be reimburse the Town of all costs of repairs to the road or bridge whether nor not posted and whether nor not the road or bridge is Solidly Frozen.

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.

First, Sec. 2.

Section 4. Exemptions

The following vehicles are exempt from this ordinance:

- (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) The Town of Jay vehicles or vehicles under the direction of a public jurisdiction with permission of the Selectmen 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. 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 or by the Selectmen. This certificate shall accompany the vehicle at all times as shall weigh slips, delivery slips, or bills of lading for the load being carried.

Applicants for exemption certificates under this subsection must present certified weigh slip for the empty weight of the unloaded vehicle as a prerequisite to obtaining an exemption certificate. The payload for any exemption under this subsection shall be calculated in accordance with Attachment C hereto. The application for an exemption under this subject shall be signed by the owner of the vehicle and shall contain the following information: registration number of the vehicle, make and year of the vehicle, vehicle identification number, registered gross weight, empty weight, commodity to be transported, vehicle's configuration, tire size and the name, address, and telephone number of the applicant.

First, Sec. 3.

Section 5. Permits

First, Sec. 4, Section 5 was deleted.

Section 6. Administration and Enforcement

This ordinance shall be administered by the Selectmen, the Road Commissioner, or law enforcement officers. The ordinance shall be enforced by the Selectmen or law enforcement officers.

First, Sec. 5.

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

violator shall be held responsible to reimburse the Town for all of the costs to repair any damaged way or bridge and any attorney fees and costs incurred in enforcing in either the fines or reimbursement.

Prosecution shall be in the name of the Town and shall be brought in the Maine District Court.

Section 8. Amendments

This ordinance may be amended by the Selectmen at any properly noticed meeting.

Section 9. Severability; Effective Date

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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 Selectmen.

Jay, Maine

Town Ordinances

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