

# **WATER EXTRACTION ORDINANCE**

Hancock, Maine

Enacted May 9, 2011

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## **SECTION 1 - TITLE AND PURPOSE**

### **A. TITLE**

This Ordinance shall be known and may be cited as the “Water Extraction Ordinance of the Town of Hancock, Maine” and will be referred to herein as "this Ordinance."

### **B. PURPOSE**

1. To ensure that any proposed Large-Scale Water Extraction activities are subject to appropriate review and approval by the Town of Hancock and the State of Maine. To provide policies promoting sustainable and equitable access to groundwater resources and supplies. To protect the general health, safety and welfare of all persons dependent upon aquifers and groundwater resources located in the Town of Hancock;
2. To protect the short-term and long-term quality and quantity of groundwater, spring water and freshwater resources within aquifers and the recharge areas for these water bodies and related surface waters, including, but not limited to, ponds, wetlands, and streams as may be located wholly or partially within the Town of Hancock;
3. To establish a regulatory framework for overseeing and managing groundwater resources and groundwater extraction activities, for avoiding the interruption of supply or degradation in the quality of groundwater resources, and for developing management practices governing groundwater extraction activities;
4. To ensure that groundwater extraction activities do not adversely impact or impair plant or wildlife communities or the viability of wetlands, meadow areas, or forested areas dependent on groundwater resources;
5. To protect private and public property proximate to and within groundwater extraction areas by regulating the structures, facilities, uses and activities associated with groundwater extraction; and, to prevent undue adverse impact to existing and proposed roadways due to extraction, processing, loading or transport of water resources; and
6. To minimize, limit and require mitigation and buffering of noise, vibration, dust, other adverse effects or pollution associated with groundwater extraction activities; and, to regulate the equipment and vehicles used in groundwater extraction, processing, loading or transport of groundwater resources.

## **SECTION 2 - GENERAL PROVISIONS**

### **A. AUTHORITY**

This Ordinance is adopted pursuant to Home Rule Powers as provided for in Article VIII of the Maine Constitution and under the authority granted to the Town by the Statutes of the State of Maine, Title 30-A M.R.S.A. Sections 2102 et seq. (Municipal Home Rule), 3001 through 3006 et seq. (Ordinance power); Section 4312 et seq. (Growth management); and Section 4352 et seq. (Zoning Ordinances), and Title 38 Section 401 et seq., as amended.

### **B. ADMINISTRATION**

The provisions of this Ordinance shall be administered by the Town of Hancock's Planning Board and enforced by the Town of Hancock's Code Enforcement Officer and Board of Selectmen. The Board of Selectmen will establish or revise, after notice and hearing, a fee schedule for the various fees required by this Ordinance.

### **C. EFFECTIVE DATE**

This Ordinance shall be effective upon its adoption by vote of the eligible voters of the Town of Hancock, Maine at town meeting.

#### D. CONFLICT WITH OTHER ORDINANCES

Whenever the requirements of this Ordinance are in conflict with the requirements of any other lawfully adopted rule, regulation or ordinance, the more restrictive provision shall apply.

#### E. SEVERABILITY

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

#### F. AVAILABILITY

A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public.

### **SECTION 3 - APPLICABILITY, PERMITTED USE AND EXEMPTIONS**

#### A. APPLICABILITY

The provisions of this Ordinance shall apply to all Large-Scale Water Extraction for transport out of the Town of Hancock, unless exempted. Any entity, person, consortium, association of entities or persons acting in concert extracting and transporting 5,000 or more gallons of groundwater or surface water during any 24 hour period, regardless of the number of extraction points utilized within the Town of Hancock, must first obtain approval from the Planning Board of the Town of Hancock.

#### B. PERMITTED USE

Large-Scale Water Extraction is a permitted use with Planning Board Site Plan Review approval in the Industrial Zone. Zoning classifications are as defined in the Hancock Environmental Control Ordinance.

#### C. EXEMPTIONS

The following are exempt from the provisions of this Ordinance: water used within the Town for agricultural purposes, water supply to residential dwellings, water supply for public facilities or for on-site commercial and industrial uses which exist as of the date of the adoption of this Ordinance. Water used for public safety, fire suppression and public water systems are also exempt from the provisions of this Ordinance.

### **SECTION 4 - APPLICATION**

A. Applications for Large-Scale Water Extraction for transport out of the Town of Hancock shall be subject to the provisions set forth in this Ordinance and the Town of Hancock Environmental Control Ordinance, including Site Plan Review, Section 7, and the following application submissions and review criteria.

B. Applications for Site Plan Review shall be submitted on application forms provided by the Town. The complete application form, required fees, and the required plans and related information shall be submitted to the Code Enforcement Officer who shall forward it to the Planning Board.

C. The submission shall contain at least the following exhibits and information:

1. APPLICATION FORM. A fully executed and signed copy of the application form;
2. FEES. Fees in the amounts specified in the fee schedule;
3. ORIGINALS. One (1) original of all maps and drawings on durable, permanent transparency material;
4. COPIES. Ten (10) copies of written materials and ten (10) sets of maps or drawings containing the information listed below. The written materials shall be contained in a bound report or a three-ring notebook. The maps or drawings shall be at a scale sufficient to allow review of the items listed under the criteria for approval, not less than 1" = 40' or a scale acceptable to the Code Enforcement Officer and Planning Board.
5. GENERAL INFORMATION. The following general information is required:
  - a. Name of owner of record and address;
  - b. Applicant's name and address if different;
  - c. The name of the proposed development;
  - d. Names and addresses of all property owners within the zone of influence.
  - e. Sketch map showing general location of the site within the Town;
  - f. Location map showing the boundaries of all properties contiguous with the property from which the water will be extracted under the control of the owner or applicant regardless of whether all or part is being developed at the time of the application;
  - g. The tax map(s), lot number(s) and 911 address of the parcel or parcels;
  - h. A copy of the deed to the property, option to purchase the property from which the water will be extracted or other documentation to demonstrate right, title, or interest in the property on the part of the applicant; and
  - i. The name(s), registration number(s), and seal(s) of the land surveyor, architect, engineer, and/or similar professionals assisting with the preparation of the plan.
6. INFORMATION REGARDING EXISTING CONDITIONS & PROPOSED DEVELOPMENT ACTIVITY. A site plan showing the following information regarding existing conditions and proposed development activity is required:
  - a. Zoning classification of the property;
  - b. Existing and proposed facilities. All existing and proposed facilities related to water extraction, transport, bottling, or other relevant activities, and the location, dimensions, including height, setbacks and ground floor elevations of all other structures, yards and buffers on property owned or controlled by the applicant, the bearings and distances of all property lines of the property to be developed and the source of this information, and proposed extraction points, prepared by a registered land surveyor as a Standard Boundary Survey;
  - c. Roads. All public and private roads, existing or proposed, the location and dimensions of driveways, roads, parking and loading area, walkways and roads and driveways on the site and within two hundred (200) feet of the boundaries of the site;
  - d. Sources of water. All wells, springs, or other locations where groundwater or surface water is drawn for private, public, or commercial use;
  - e. Surface-water resources. All surface water resources, including but not limited to streams, wetlands, ponds, and vernal pools;

- f. Location and size of any existing and proposed sewer and water mains, culverts, and drains on the property to be developed and of any that will serve the development from abutting streets or land, the location of all existing and proposed pipes, pipelines, aqueducts or similar that are intended to facilitate transport of extracted water from extraction point(s) to all intended end users, the location of open drainage courses, wetlands, significant stands of trees, other important natural features, with a description of such features to be retained and proposed landscaping and buffering;
- g. Existing and proposed topography of the site at an appropriate contour interval (1', 2', or 5') depending on the nature of the use and character of the site or such other interval as the Planning Board may determine;
- h. Major natural features on the site and including within two hundred fifty feet (250') of the boundaries of the site, wetlands, streams, ponds, flood plains, groundwater aquifers, significant wildlife habitats or other important natural features as identified in the comprehensive plan;
- i. Anticipated number of employees. Soils information if on-site sewage disposal is proposed. This information should be detailed enough to allow those portions of the site not suitable for on-site disposal systems to be identified;
- j. The direction of existing and proposed surface water drainage flow across the site;
- k. The location, front view, and dimensions of existing and proposed signs;
- l. Utility lines. Any existing or proposed utility lines proposed for use in the groundwater extraction activities, and the location and type of all existing and proposed exterior lighting;
- m. A copy of such covenants or deed restrictions, if any, as are intended to cover all or part of the tract. Such covenants or deed restrictions shall be referenced on the plan;
- n. Identification of historic sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed in the National Register of Historic Places;
- o. Monitoring locations. All monitoring wells, piezometers, flumes, staff gages, sampling locations, or other facilities and locations used in analysis of the site;
- p. Possible sources of contamination. All known or potential sources of groundwater contamination, including but not limited to surface and subsurface wastewater disposal systems, landfills and dumps, sand-salt storage and mixing areas, junkyards, manure stacking sites, agricultural fields or other areas of pesticide, herbicide, or fertilizer application, and tanks or other storage areas for fuel or other hazardous materials;
- q. A schedule of construction, including anticipated beginning and completion dates; and
- r. Related applications and documents. Applications shall include copies of all related applications, exhibits and reports for such extraction project filed with any other municipal authority or any agency or department of the State of Maine or United States government, including, but not limited to, as required under 22 M.R.S.A. § 2660 et seq. (transport of water for commercial purposes) or under applicable Maine Department of Health and Human Services rules and regulations. Related applications and documents filed after the date of the application but before any approval is issued by the Planning Board shall be submitted to the Planning Board within 10 days of filing such related applications and documents.

7. **DEMONSTRATION OF NO ADVERSE IMPACT.** Submit information demonstrating that the proposed withdrawal of water will not adversely affect existing uses of groundwater or surface water resources. Note that all instrumentation used during this assessment must meet standards of accuracy traceable to the National Institute of Standards and Technology.

- a. Natural flow from springs, Other Surface Sources, or Artesian Wells. If the proposed extraction does not involve pumping water out of the ground or a surface water body, but relies instead in whole or part on collection of water from a spring or surface source, demonstrate that the flow remaining after removal of the water for transport will be sufficient to maintain existing and designated uses of downstream surface waters, particularly during periods of low-flow, including existing natural migration and spawning of aquatic species, and that the classification of downstream surface waters will not be affected.
- b. Pumping from surface waters. If the proposed extraction includes pumping water out of a surface water body, demonstrate that the flow and water levels remaining after removal of the water for transport will be sufficient to maintain existing and designated uses of upstream and downstream surface waters, particularly during periods of low-flow, including existing natural migration and spawning of aquatic species, and that the classification of upstream and downstream surface waters will not be affected. Demonstrate that any changes in base flow resulting from reduction in pre-pumping upstream or downstream flows will not adversely impact existing uses of groundwater or groundwater classification.
- c. Pumping of groundwater. If the proposed extraction includes pumping of groundwater, submit a determination of the long-term safe yield of each well, including a prediction of operating levels and determination of the zone of influence and zone of contribution for each well. Provide a specific assessment, developed from monitoring of water levels and flows during the pump tests, of the impacts on any existing wells and existing groundwater flow paths within the zone of influence and zone of contribution for each well, and on the impacts on baseflow volumes, potential for induced recharge, maintenance of flow and surface water quality, duration of saturation in wetlands and vernal pools, and other potential impacts on surface-water or groundwater quantity, quality, and classification within the zone of influence and zone of contribution for each well. Pump tests should include, at a minimum, the following:
  - i. Establishment of near-field and far-field monitoring wells, including nested wells near springs, wetlands, and other surface waters in order to evaluate changes in vertical flow due to the pumping, and background wells to document background water levels in an area of the aquifer (or adjacent aquifer) that will not be influenced by the test.
  - ii. Location and elevation of the monitoring wells relative to the existing well(s), to the nearest 1 ft horizontal and 0.01 ft vertical.
  - iii. Measurement of elevation and distance from the pumping well(s) of springs, streams, ponds, and wetlands shown on the site plan.
  - iv. Establishment of staff gages or pressure transducers in streams, ponds, open-water wetlands, and other surface waters reasonably likely to be affected by pumping.
  - v. Establishment of one or more precipitation monitoring stations.
  - vi. Two or more weeks of daily background monitoring at all stations.
  - vii. A stepped-rate pumping test to assess the hydraulic characteristics of the well or wells to be pumped during the long-duration test.
  - viii. A long-duration pumping test at a reasonably fixed rate, to continue until stabilization has been reached or for 5 days, whichever is less. Stabilization is considered to be reached when the drawdown reading at either an observation well no more than ten feet from the pumping well or the pumping well itself has not varied by more than 1/2 inch (0.04 feet) during the preceding 24-hour period. An alternative definition of stabilization may be proposed by the applicant and must

be reviewed by the Planning Board or its designee and approved by the Planning Board prior to the pumping test. The Planning Board may require longer-duration tests if determined to be necessary to assess impacts to surface waters or other wells.

- ix. Monitoring of water levels at monitoring wells, surface waters, springs, and other areas, at a frequency determined by the Planning Board or its designee and approved by the Planning Board, during the pump tests and a recovery period no shorter than the duration of the test.
  - x. Records of precipitation during the pump test and recovery period, at a frequency determined by the Planning Board or its designee and approved by the Planning Board.
  - xi. Flows from the pumping well in gallons per minute.
  - xii. Uses and flows of nearby wells or other operations, such as construction dewatering, in the vicinity of the pumping well or monitoring wells that could affect groundwater levels during the test and recovery period.
8. GEOLOGIC CHARACTERIZATION. A report describing a conceptual hydrogeologic model of the aquifer being considered and its recharge areas, including but not limited to:
- a. Geologic Description. Description of the geology and geologic history of the area.
  - b. Cross-Sections. Generalized geologic cross-sections through the aquifer based on available information such as well logs, geologic reports, maps, and subsurface data.
  - c. Logs. Logs of all wells, borings, seismic lines, and other subsurface data used in development of the report.
  - d. Hydrogeologic Description. A description of aquifer flow, hydraulic boundaries, recharge conditions, interaction of the source of the withdrawal with surrounding water resources, and springs, and the estimated zone of contribution.
  - e. Conceptual Flow Net. A conceptual groundwater flow-net map for the aquifer and its recharge areas based on available data, showing hydraulic head contours; and horizontal and vertical groundwater flow under average, ambient, non-pumping conditions.
9. MONITORING PLAN. Submit a plan for independent long-term monitoring of groundwater and surface water within the zone of influence and of background conditions outside that zone if determined to be necessary by the Planning Board. The independent monitoring agency shall be subject to approval by the Planning Board and shall be paid for by the applicant. The number and location of monitoring wells to be approved by the Planning Board, taking into consideration the size of the zone of influence, number of users therein and any other circumstance deemed appropriate by the Planning Board. This may include, but is not limited to, regular measurement and assessment of water level, water quality, streamflow, biomonitoring, wetland vegetation, amount and type of precipitation, and other sources of information as determined to be applicable to particular sites, depending on the presence and sensitivity of the resources, the proposed volume and method of extraction, and other relevant factors. This plan must include a provision for monthly submission of data to the Planning Board and Code Enforcement Officer, comparison of measured data to predicted values, and a plan to be implemented in the event that monitoring indicates the potential for adverse impact on surface-water or groundwater quantity, quality, and classification. If the data indicates adverse impact, upon notification by the Code Enforcement Officer to the applicant, the water extraction activities shall be discontinued. Before resumption of water extraction activity a hydrogeologic report prepared by a hydrogeologist certified to perform this type of work in the State of Maine and paid for by the applicant and approved by the Planning Board, shall



be submitted to the Code Enforcement Officer and the Planning Board. Such report shall determine if the degradation was caused by the water extraction activity and shall also identify any remedial action necessary to restore the water quality or quantity to the conditions recorded in these wells during the test period. Such remedial action must be completed prior to resumption of the water extraction activity.

10. **TRAFFIC IMPACT ANALYSIS.** A traffic impact analysis prepared, signed and sealed by a State of Maine registered traffic or transportation engineer. The analysis shall include the following:
  - a. Routes to be used;
  - b. Access conditions at site;
  - c. Types and weights of water transport vehicles expected;
  - d. The expected number of daily water transport vehicle trips;
  - e. Peak-hour volumes;
  - f. Pre- and post-directional distribution of hourly and daily traffic volumes and level of service for the affected roads/streets and intersections;
  - g. Assessment of the load capability and volume capacity of the roads/streets to be used;
  - h. Effect upon the level of service of the roads/streets giving access to the site and the neighboring streets that may be affected; and
  - i. Recommended improvements to assure an adequate level of service on the affected streets and to mitigate the physical degradation of roads sooner than the anticipated life span.

## **SECTION 5 - REVIEW PROCEDURES**

- A. **SUBMISSION OF COMPLETED APPLICATION TO THE CODE ENFORCEMENT OFFICER.** The applicant shall submit the requisite number of copies of their application and supporting information required by Section 4.
- B. **CODE ENFORCEMENT OFFICER REVIEW**
  1. **DATED RECEIPT.** The Code Enforcement Officer shall issue the applicant a dated receipt.
  2. **FEES SUBMITTED.** The applicant shall provide the Code Enforcement Officer with the applicable fees established in Section 9. (see Fee Schedule)
  3. **REVIEW FOR COMPLETENESS.** The Code Enforcement Officer shall initially review the application and determine whether or not it is complete.
  4. **NOTICE OF INCOMPLETE APPLICATION.** If the application is found to be incomplete, the Code Enforcement Officer shall, within ten (10) days, notify the applicant in writing of the information needed to complete the application. Upon the applicant's submission of such additional information, Steps 3 and 4 shall be repeated.
  5. **APPLICATION FORWARDED.** If the application is found to be complete, the Code Enforcement Officer shall forward copies of the application and supporting documents to the Planning Board with the letter of complete submission.
  6. **NOTICE.** Property owners within the zone of influence shall be notified by mail by the Town, at the applicant's expense, of all pending applications for Large-Scale Water

Extraction for transport out of Hancock. This notice shall indicate the time, date, and place of Planning Board consideration of the application.

#### C. PLANNING BOARD REVIEW

At the meeting of the Planning Board at which the proposed water extraction is scheduled to be reviewed, the Planning Board shall:

1. DETERMINATION OF COMPLETENESS. Determine whether or not the application is complete;
2. NOTICE OF INCOMPLETENESS. If the application is determined to be incomplete, the Planning Board shall inform the Code Enforcement Officer of the information required to make the application complete. The Code Enforcement Officer shall, within ten (10) days, inform the applicant, in writing, of the additional information required by the Planning Board.
3. PUBLIC HEARING. If the application is determined to be complete, the Planning Board shall deem the application pending and shall set the matter to public hearing. Such hearing shall take place within forty-five (45) days of the Planning Board's determination that the application is complete. This deadline may be extended by mutual agreement of the Planning Board and the applicant, either in writing or orally, on the record at a public meeting.

#### D. PUBLIC HEARING PROCEDURES

Site Plan Review public hearings and notice thereof shall comply with the following procedures:

1. PUBLISHED NOTICE. Notice of said hearing shall be published in a newspaper of general circulation in the Town of Hancock at least two (2) times, six (6) and thirteen (13) days prior to the hearing date.
2. MAILED NOTICE. At least fourteen (14) days prior to the hearing date, written notice of said hearing shall be mailed by the Town, at the applicant's expense, to the applicant, to the owners of all property within the zone of influence of the property in question, to the Chair of the Hancock Board of Selectmen, and the Ellsworth and Lamoine Planning Boards if located in the Aquifer Protection Overlay Zone. The owners of property shall be considered to be those shown on the Town's tax list as the persons against whom taxes are assessed. The Planning Board shall, in each case, maintain a list of property owners so notified. Notice shall be deemed received if mailed to an owner's last known address according to the Town tax records. Failure of any property owner to actually receive notice shall not necessitate another hearing or invalidate any actions of the Planning Board.
3. CONTENT OF NOTICE. Notice of said hearing shall identify the applicant and the property involved, describe the specific nature of the proposal, state the date, time and place of the hearing, and explain how the recipient of the notice may attend and present evidence.
4. REPRESENTATION. At any hearing a party may be represented by an agent or attorney provided, however, if any party is not present, any person acting as that party's agent or attorney shall provide written evidence of such authority.

5. CONTINUATION. Any hearing may be continued or recessed to another time for good cause shown or upon written or recorded agreement of the Planning Board and the applicant.

#### E. PLANNING BOARD DELIBERATION AND DECISION

1. DELIBERATION. Within thirty-five (35) days after the public hearing on an application, the Planning Board shall deliberate to determine whether the proposed water extraction complies with all applicable requirements set forth in Section 4 and meets the Criteria of Approval set forth in Section 6. This deadline may be extended by mutual agreement of the Planning Board and the applicant, either in writing or orally, on the record at a public meeting.
2. DECISION. If the Planning Board finds that the proposed water extraction complies with all such review criteria it shall issue a Finding of Fact granting approval subject to such terms and conditions as the Planning Board considers advisable to ensure conformity with standards and criteria of this Ordinance, or to protect the public's health, safety, or general welfare. If the Planning Board finds that the proposed water extraction does not comply with all applicable review criteria, it shall issue a Finding of Fact denying approval. In either case the Planning Board shall, within ten (10) working days after the completion of its deliberations, issue specific written findings of fact supporting its decision.

- F. PERMIT. If the Planning Board approves the water extraction Application, the Code Enforcement Officer shall issue a permit.

#### G. PROFESSIONAL REVIEW

1. ADDITIONAL STUDIES: The Planning Board may require the applicant to undertake any additional studies which it deems reasonable and necessary to insure that the requirements of the Ordinance are met. The cost of all such studies shall be borne by the applicant.
2. INDEPENDENT TECHNICAL REVIEW: The Planning Board may require that an independent consultant(s) acceptable to the Planning Board review one (1) or more submissions of an application. The independent consultant(s) shall report to the Planning Board as to the project's compliance or noncompliance with the applicable provisions of this Ordinance and recommend, if appropriate, those actions which will result in compliance. Such consultants may include:
  - a. An Attorney;
  - b. A Land Use Planner with AICP certification or comparable credentials;
  - c. A Registered Professional Engineer;
  - d. A Registered Architect;
  - e. A Registered Landscape Architect;
  - f. A Registered Geologist;
  - g. A Licensed Soil Scientist;
  - h. A Registered Land Surveyor; or
  - i. Any other Registered/Licensed Professional or independent expert fully qualified and acceptable to the Planning Board.

The consultant(s) selected shall estimate the cost of such review and the applicant shall deposit with the Town the full estimated cost in accordance with Section 9.

## **SECTION 6 - REVIEW CRITERIA**

No application for Large-Scale Water Extraction activities for transport out of the Town of Hancock shall be approved unless the Planning Board makes positive written findings that the applicant has submitted clear and convincing evidence that the following criteria has been or shall be met. The burden of proof is solely on the applicant.

1. Adequate provision has been made for off street parking and loading in accordance with the standards of the Environmental Control Ordinance;
2. Adequate provision has been made for traffic movement of all types, including pedestrian, into, out of, and within the proposed project in accordance with the standards of the Environmental Control Ordinance. The Planning Board shall consider traffic movement both on-site and off-site in making its determination under this criteria;
3. Any traffic increase attributable to the proposed project will not result in unreasonable congestion, a reduction in the level of service, or unsafe conditions on a road in the vicinity of the proposed development. Additional vehicular demand on existing Town roads or public easements occasioned by the operation of the extraction facility(ies) will not exceed the capacity of those roads, or cause the premature failure, aging or diminished utility of those roads as determined by the Town Road Commissioner, and/or State of Maine Department of Transportation;
4. That the proposed project will be built on soil types which are suitable to the nature of the project and that adequate provision has been made to avoid erosion, contamination of ground or surface waters, interference with adjacent land, over-burdening of natural or artificial drainage systems, and/or any other adverse effects of inadequate drainage;
5. Adequate provision has been made to locate and design proposed outdoor display and/or storage areas so as to avoid any safety hazard to vehicular and pedestrian traffic on and off the site;
6. Adequate provision has been made to avoid any hazard to travel on public or private ways, or any glare or other nuisance to the use of adjoining public or private property;
7. Adequate provision has been made with regard to Buffers, Screening, Landscaping, and the preservation and Enhancement of Significant natural features in accordance with the standards of the Environmental Control Ordinance;
8. Adequate provision has been made to avoid unreasonable adverse effects on the scenic or natural beauty of the area, aesthetics, historic sites, rare and irreplaceable natural areas, existing uses, air quality, water quality, or other natural resources within the town or in neighboring towns. The applicant has complied with the requirements of 38 M.R.S.A. § 480-D, Paragraph 3, Harm to Habitats and Fisheries;
9. Whenever a project is situated, in whole or in part, within two hundred fifty feet (250'), horizontal distance, of the normal high-water line of any water body, or within two hundred fifty feet (250') horizontal distance, of the upland edge of a freshwater wetland, or within seventy five feet (75'), horizontal distance, of the normal high-water line of a stream,

adequate provision has been made to conserve shoreland vegetation, visual points of access to waters as viewed from public facilities, and actual points of public access to waters;

10. Adequate provision has been made to prevent any significant adverse effect upon the public health, safety, or general welfare of the neighborhood or community;
11. Adequate provision has been made to prevent any undue adverse effect upon the property values of adjacent or nearby properties;
12. The proposed project will not exceed the capacity of existing municipal roads or services necessary to support the project, or has made adequate financial provisions, acceptable to the Town's Board of Selectmen, to fund the cost of road improvements and increased municipal services that may be necessary to support the project.
13. Adequate provision has been made to assure the proper operation of the proposed business(es) or activity(ies) on the site through the provision of adequate and appropriate utilities, drainage, water supply, sewage disposal, solid waste disposal, access, parking and loading, and other necessary site improvements in accordance with the standards of the Environmental Control Ordinance;
14. Technical expertise and financial capability. The applicant has demonstrated to the Planning Board that it possesses the technical expertise and financial resources to provide continuing adherence and capacity to meet the requirements of this ordinance;
15. Sustainability of aquifer characteristics. The quantity of groundwater proposed to be extracted will not cause adverse impact to the groundwater flow patterns relating to the aquifer or its recharge areas, related springs or other groundwater resources;
16. Sustainability of aquifer production. The quantity of groundwater proposed to be extracted will not adversely affect the long-term sustainability of the aquifer, groundwater resource recharge areas, or other groundwater resources, during periods of drought or due to reasonably anticipated changes in the recharge capacity of the affected groundwater resources;
17. Sustainability of surface water characteristics. The quantity of groundwater to be extracted will not adversely impact, significantly diminish, or alter the characteristics of any surface waters, including during periods of drought;
18. Land subsidence. The quantity of water to be extracted will not cause any ground subsidence on the parcel on which groundwater extraction is taking place or in the vicinity of the parcel on which groundwater extraction activities are proposed;
19. Sustainability of water quality. The proposed extraction will not create a health risk or create adverse impacts, such as drinking water turbidity, reduced clarity, or new odors within existing groundwater resources from the disturbance of existing geologic materials within the aquifer, or from any other cause related to the proposed groundwater extraction activity;
20. Monitoring Plan. Adequate provision has been made to ensure that a monitoring plan meets the requirements as described in Section 4.C.9;

21. Sustainability of preexisting domestic use of groundwater. The applicant assumes and shall be individually responsible for any and all liability for the loss, interruption, degradation or interference with the preexisting use or beneficial domestic use of groundwater enjoyed by person caused by the applicant's participation in Large-Scale Water Extraction activities. For the purposes of this section "beneficial domestic use," "groundwater" and "preexisting use" shall be as defined by 38 M.R.S.A. § 404, Paragraph 1A through 1C and liability of applicant shall be for compensatory damages in accordance with 38 M.R.S.A. § 404.;
22. Performance Guarantee. No approval shall be made without a surety bond or an equivalent and appropriate security, including anticipated inflation, in an amount as determined and approved by the Hancock Board of Selectmen in consultation with the Town Attorney to secure performance of the activities permitted to an applicant seeking to engage in groundwater extraction activities and to ensure compliance with such conditions as the Planning Board may impose in connection with such authority;
23. Pipeline use. If extraction facility(ies) will be served by pipes, pipelines, aqueducts or similar devices, such installations will be sited and constructed in a manner which shall not unduly interrupt the public use of any existing roadway, the public's access to any public facility, great pond, and access to private property; or pose the risk of damage to any property along or through which installation traverses as a result of any failure or malfunction which might cause ponding, erosion, run-off, or similar conditions; and
24. Adequate provision has been made to assure that the proposed development conforms in all respects with the provisions of this Ordinance and all applicable State laws and regulations and local ordinances.

## **SECTION 7 - PERFORMANCE GUARANTEE**

No approval shall be made without a surety bond or an equivalent, including anticipated inflation, as determined by the Hancock Board of Selectmen in consultation with the Town Attorney to secure performance of the activities permitted to an applicant seeking to engage in groundwater extraction activities and to ensure compliance with such conditions as the Planning Board may impose in connection with such authority. The bond or surety shall be in an amount approved by the Board of Selectmen.

## **SECTION 8 - TERMS OF APPROVAL, RENEWAL, EXPANSION, TRANSFER AND DISCONTINUANCE**

- A. TERMS OF APPROVAL. Permits shall be issued for a period of three years.
- B. RENEWAL. Permits may be renewed subject to the review criteria of this section. At the expiration of the three-year period, any such water extraction activities shall require the water extractor(s) to file for and receive approval according to the renewal procedures, terms and review criteria of this section. Any application for a renewal permit must be filed with the Planning Board not less than 90 days prior to the expiration of the existing permit.

With respect to an application for a permit renewal, after notice, public hearing, deliberation and decision as referred to in Section 5, the Planning Board shall issue a Finding of Fact either granting or denying approval of the renewal permit for another three-year period. The Planning Board shall grant approval, provided:

1. There is no increase in the permit holder's extraction activities in terms of the quantity of water to be extracted;
2. There is no change in the location or configuration of the extraction facility;
3. There has been no uncorrected failure by the permit holder to comply with any conditions of the expiring permit;
4. There has been no uncorrected failure by the permit holder to meet the requirements applicable to the expiring permit;
5. The permit holder has conformed to the required monthly monitoring reports to the Code Enforcement Officer and Planning Board; and
6. There is no significant, credible evidence that the permit holder's continuing operations would be unable to meet the requirements of this ordinance during any renewal period.

C. EXPANSION. If the applicant proposes to expand their operation with regard to quantity of water to be extracted, change in number, location or configuration of wells, increase in traffic or increase in size of facility, they shall follow the complete application process.

D. TRANSFER OF OWNERSHIP. Any transferee of ownership of a facility subject to the provisions of this Ordinance shall be precluded from all extraction activities until:

1. The transferee applies to the Planning Board and the Planning Board approves the transfer of the existing permit for the remaining term of the application of the transferor's permit;
2. The Planning Board is satisfied that the transferee has the technical expertise and financial capability to provide continuing adherence to meet the requirements of this Ordinance;
3. The transferee shall satisfy the requirements of all performance guarantees; and
4. The Transferee shall agree to all the requirements and conditions of the original approved application.

E. DISCONTINUANCE OF PERMIT. The permit holder is required to inform the Town of Hancock if and when extraction points are going to be nonfunctional. If an existing or permitted Large-Scale Water Extraction activity is discontinued for more than one year, such activity shall require application for a new permit.

In addition, after notice and hearing, the permit for Large-Scale Water Extraction activities may be discontinued by the Board of Selectmen in consultation with the Town Attorney during the three-year term of the permit for significant violations and/or variations of the conditions of permit.

## **SECTION 9 - ADMINISTRATIVE FEES**

### **A. GENERAL PROVISIONS**

1. APPLICATIONS CONSIDERED INCOMPLETE UNTIL PAYMENT OF REQUIRED FEE. Applications for any of the permits, approvals, or certificates specified below which are not accompanied by the required fee shall be considered incomplete and no action will be taken on said application until the required fee has been received by local officials.
2. FEE TO BE PAID TO TOWN. All fees shall be paid in the form of a check, cash or suitable legal tender, to the Town of Hancock and the purpose of the fee shall be clearly indicated on the receipt for same.

3. APPLICATION PROCESSING FEES. The Application Processing Fees required to cover the administrative handling costs associated with Site Plan review under this Ordinance are as follows:

The non-refundable fee to accompany the application as the same may be established from time to time by the Board of Selectmen, after notice and hearing. The fee shall reflect the reasonable cost of processing, review, regulation and supervision of the application. (see Fee Schedule)

4. TECHNICAL REVIEW FEE. In addition to the Application Processing Fee, the applicant shall be required to pay an additional fee as the same may be established from time to time by the Board of Selectmen, after notice and hearing. (see Fee Schedule) This fee is to be used to reimburse the time and expenses incurred by the Town and such other independent consultant(s) the Planning Board may deem necessary to assist it with its review of the application. Such other consultants may include:
  - a. An Attorney;
  - b. A Land Use Planner with AICP certification or comparable credentials;
  - c. A Registered Professional Engineer;
  - d. A Registered Architect;
  - e. A Registered Landscape Architect;
  - f. A Registered Geologist;
  - g. A Licensed Soil Scientist;
  - h. A Registered Land Surveyor; or
  - i. Any other Registered/Licensed Professional or independent expert fully qualified and acceptable to the Planning Board.

This Technical Review Fee shall be paid prior to the start of the Planning Board's review of any application for water extraction. This fee shall be paid in the form of a check, cash or suitable legal tender, paid to the Town of Hancock and the purpose of the fee shall be clearly indicated on the receipt for same.

If the balance of the unexpended funds are drawn down by fifty percent (50%) or more, the applicant shall be notified and required to pay an additional amount as the same may be established from time to time by the Board of Selectmen, after notice and hearing (see Fee Schedule). The applicant shall continue to be notified and required to pay the appropriate additional amounts as necessary whenever the balance of the funds is drawn down by 50% of the original amount. Failure to pay the required amount within 30 days shall also be a violation of this Ordinance and be cause to stop the review process.

Any balance remaining, after the completion and inspection of required improvements, shall be returned to the applicant.

5. OTHER FEES. The applicant shall be required to bear full costs of all notices, inspections, consultants, and enforcement.

## **SECTION 10 - ENFORCEMENT**

Enforcement procedures and legal action will be in conformity with those of the Hancock Environmental Control Ordinance, Section 10.



As an additional means of enforcement, the Board of Selectmen may suspend or revoke any permit issued hereunder if it determines, after notice and hearing, that it was issued in error or upon incomplete or false information, or that applicant has failed to comply with any conditions of approval, and upon such suspension or revocation all water extraction addressed by said permit shall cease until a new approval or permit is obtained under this ordinance by the applicant.

## **SECTION 11 - MISCELLANEOUS**

- A. **AMENDMENT AFTER APPROVAL.** No modifications shall be made in an approved application unless they have been resubmitted to and approved by the Planning Board. The intensity of the review will be determined by the Planning Board, and depends upon the complexity of the proposed alteration.
- B. **ADMINISTRATIVE APPEALS.** All administrative appeals shall follow the procedure outlined in Section 11. of the Environmental Control Ordinance.

## **SECTION 12 - AMENDMENT OF THIS ORDINANCE**

The process for amending this Ordinance is as follows:

- A. **INITIATION.** A proposal to amend this Ordinance may be initiated by:
1. The Planning Board, by majority vote;
  2. The Board of Selectmen, through a request to the Planning Board; or
  3. The Public, through a written petition signed by at least fifty (50) residents registered to vote in the Town of Hancock. When an amendment to this Ordinance is proposed by other than the municipal officers or Planning Board, a fee of one hundred dollars (\$100) shall accompany the proposal to cover the cost of review, hearings, and advertisements. This fee is non-refundable.
- B. **PROCESS OF ADOPTION.** The process to be followed in adopting an amendment to this Ordinance is as follows:
1. Proposed amendments must first be submitted to the Planning Board for their consideration;
  2. The Planning Board, shall, within thirty (30) days of receiving proposed amendment, set a date to hold a public hearing on the proposed amendment;
  3. Notice of the public hearing shall be given as required by State Law;
  4. The Planning Board shall make its official report at a Board of Selectmen's meeting occurring within sixty (60) days after the public hearing;
  5. Enactment of proposed amendment that does not have the support of the majority vote of the Planning Board shall require a two-thirds (2/3) vote of the voters voting at the Town Meeting; and
  6. Enactment of a proposed amendment having the approval of the Planning Board shall require only a majority of the voters to enact that amendment.

## SECTION 13 - DEFINITIONS

### A. CONSTRUCTION OF LANGUAGE

1. In this Ordinance, certain terms or words should be interpreted as follows:
  - a. The word “person” and “applicant” includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual;
  - b. The present tense includes the future tense, the singular number includes the plural and plural includes the singular;
  - c. The word “shall” is mandatory;
  - d. The word “may” is permissive;
  - e. The words “used” or “occupied” includes the words “intended”, “designed”, or “arranged to be used or occupied”; and
  - f. The word “dwelling” includes the word “residence”.
2. Terms not defined shall have the customary dictionary meaning.

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

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

**AQUIFER:** An underground body of water and earth, sand, gravel, or rock that contains sufficient saturated permeable geologic material to hold, conduct and yield significant quantities of groundwater to wells and springs. The term "aquifer" as used in this article includes all areas specifically mapped or identified on the current maps issued by the Maine Geological Survey.

**COMMERCIAL USE:** The use of lands, buildings, or structures, the intent and result of which activity is the production of income from the buying and selling of goods and/or services.

**DROUGHT:** A period of abnormally dry weather that is sufficiently prolonged to cause serious hydrologic imbalance in the affected area. It is possible to index the severity of a drought by an impact grading system.

**DWELLING:** A building or portion thereof, used exclusively for residential occupancy, including single-family, two-family and multiple-family dwellings.

**EXPANSION:** An increase in the water extraction operation with regard to quantity of water to be extracted, change in number, location or configuration of wells, increase in traffic or increase in size of facility.

**EXTRACTION POINT and EXTRACTION FACILITY:** The physical location where groundwater is extracted from the ground by the use or development of springs, wells, pumps, piping apparatus, catchments, weirs or other extractive devices, methods or technologies.

**GROUNDWATER:** Underground water resources located at or below the water table and within the pore space of unconsolidated sediments or in fractures in bedrock.

**HISTORIC OR ARCHAEOLOGICAL RESOURCE:** Any site, building, structure or object, significant in American history, architecture, archaeology, engineering or culture, that are listed in the National Register of Historic Places (see 16 U.S.C.470w(5); 36CFR 60 and 800).

**INDUSTRIAL USE:** Use of a premises for assembling, fabricating, finishing, manufacturing, packaging, or processing. These include but are not limited to assembly plants, laboratories, power plants, pumping stations and repair shops.

**LARGE-SCALE WATER EXTRACTION ACTIVITIES:** Extraction of 5,000 or more gallons of water from a single or multiple extraction points located within the Town of Hancock within any twenty-four-hour period by any individual, business association or entity, consortium or association of related individuals or related business entities for transport out of the Town of Hancock.

**LEVEL OF SERVICE:** A qualitative measure that incorporates the collective factors of speed, travel time, traffic interruptions, freedom to maneuver, safety, driving comfort and convenience, and operating costs provided by a highway facility under a particular volume condition, as established by the Institute of Transportation Engineer's Transportation and Traffic Engineering Handbook, 2nd edition (or updates).

**PUBLIC FACILITIES:** Any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity

**PUBLIC WATER SYSTEM:** A public water system is defined at 40 CFR 141.2, in the Code of Federal Regulations and in the Maine Rules Relating to Drinking Water at 10-144E Chapter 231 Section 2. By this definition a public water system delivers water through a set of pipes for human consumption and has at least 15 service connections, or regularly serves at least 25 residents for 60 or more days per year.

**TOWN:** The Town of Hancock, Maine.

**TRANSPORT or TRANSPORTING:** To convey or carry from one place to another.

**WATER BODIES or SURFACE WATERS:** Lakes, ponds, rivers, streams, wetlands, and similar surficial water bodies.

**WATER EXTRACTION:** The taking, withdrawal, or removal of water from groundwater or surface water sources, including aquifers, springs, wells, lakes, ponds and streams, or the like, by the same individual or entity, or consortium or association of individuals or entities, regardless of the number of extraction facilities utilized.

**WATERSHED or DRAINAGE BASIN:** The area of land in which all precipitation (rainfall, snow melt, etc.) drains towards a single location or area and water body or watercourse. Ridges of higher ground generally form the boundaries between watersheds. At the linear boundaries of a drainage basin, precipitation falling on one side flows towards the low point of one drainage basin while precipitation falling on the other side of the boundary flows towards the single location or area and water body or watercourse of the adjacent drainage basin.

**WATER TABLE:** The level of the surface of groundwater or the water saturated zone within the underground substrate. The location of a water table is revealed by the level at which water stands in a well open along its length and which penetrates into adjacent groundwater resources.

**ZONE OF CONTRIBUTION:** The area of an aquifer that is capable of contributing groundwater to a well or other extraction point under the most severe pumping and limited recharge conditions that can be realistically anticipated, (i.e., 180 days of pumping at the maximum approved yield rate with no recharge of the groundwater resources from precipitation). A zone of contribution is bounded by groundwater divides which are evidenced by the pumping of the well and/or by the contact zones of supplying aquifers with adjacent low-permeable geologic materials such as glacial till or bedrock. Depending on local geologic and hydrologic conditions, surface water bodies, such as rivers, streams, wetlands, ponds or lakes, may act as recharge boundaries and define a zone of contribution. In all cases, a zone of contribution will extend upgradient within the related aquifer areas to the point of intersection of the aquifer with prevailing site-specific hydrogeologic boundaries such as a groundwater divide, a contact zone with low-permeable geologic materials, such as glacial till or bedrock, or a recharge boundary which may be demarcated by a surface water body.

**ZONE OF INFLUENCE:** The area surrounding a pumping well within which there are or will be physical changes in the water table due to groundwater relocation, extraction or withdrawal or the interruption of groundwater recharge conditions.

Ant Blasi  
Hancock  
LD 1111

Dear Utilities Committee Members,

I am a Hancock County Soil and Water Conservation District Supervisor, and 21-year planning board member testifying as a private citizen. LD1111 Ought to Pass. If you believe in Home Rule, a.k.a. Community's Right to Self-Governance, which begins with protecting its Ecosystems and Potable Water Supply, you should have no concerns about supporting LD 1111. This means not just where the well is, but also in feeder municipalities of the watershed that yields the commercial well. LD1111 rightfully places the decision to allow extraction and transportation of common water in the hands of these voters. This vote should be by secret ballot in each municipality. Perhaps a protocol for notifying these municipalities of the intent to draw their water on a commercial scale, as well as a definition of commercial extraction for export should be amended to the bill. Additionally, a reminder of their rights to enact moratoria should be amended to the bill, to give their affected citizens ample time to prepare for their town votes and for the public meeting in 3.2.

Here is an excerpt from the Town of Hancock's Water Extraction Ordinance, which I participated in writing and enacting in 2011 and which I have attached:

**LARGE-SCALE WATER EXTRACTION ACTIVITIES:** Extraction of 5,000 or more gallons of water from a single or multiple extraction points located within the Town of Hancock within any twenty-four-hour period by any individual, business association or entity, consortium or association of related individuals or related business entities for transport out of the Town of Hancock. If each affected watershed municipality adopted this language, the net average daily commercial extraction might be justly regulated at the development site. Who appoints water commissioners? Why won't they recommend legislation to do what LD1111 does? Please pass this bill to correct this. Thank you.