



Town of Perry

Large Scale Water Extraction Ordinance

Adopted: *August 18, 2014*

Article I. TITLE

This ordinance shall be known and cited as the "Large Scale Water Extraction Ordinance" of the Town of Perry, Maine.

Article II. PURPOSE

The intent and purposes of this ordinance are:

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

Article III. AUTHORITY

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

Article IV. LARGE SCALE WATER EXTRACTION

A. Permit Required for Large Scale Water Extraction

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

B. Activities not requiring a Permit

1. Fire protection and activities ancillary thereof.
2. Seasonal Agriculture

C. Application Requirements

1. An applicant seeking approval for a large scale water extraction facility shall submit a written application accompanied by site plans prepared by a licensed surveyor, licensed engineer or similar appropriately licensed professional.
2. The Board of Selectmen of the Town of Perry shall establish a nonrefundable application fee schedule which may be amended by the Board of Selectmen from time to time. The nonrefundable application fee shall be submitted contemporaneously with the application. All checks shall be made payable to the Town of Perry.
 - a. The Town may retain appropriate professionals or consultants to assist the Planning Board in reviewing any application for a large scale water extraction facility. If the Planning Board determines an application is complete and its review will require third-party professionals or consultants, the Planning Board shall make such recommendations to the Board of Selectmen to engage professionals/consultants to assist in the Planning Board's review. The applicant shall be responsible for all professional/consultant costs incurred by the Town. The professional(s)/consultant(s) retained by the Town shall estimate the cost of such review, the Planning Board shall notify the applicant of the estimated cost, and the applicant shall deposit, with the Town, the full estimated cost, which the Town shall place in an escrow account. The Town shall pay the professional(s)/consultant(s) from the escrow account and refund the applicant any funds remaining after final payment.
3. The application shall include:
 - a. Evidence of applicant's right, title and interest in and to the property (ies) from which the water is to be extracted. If such evidence is other than ownership evidenced by a deed duly recorded in the Washington County Registry of Deeds, the entire document/documentation whether lease, option, contract, or other shall be submitted with the application. Proprietary confidential information may be redacted provided it is not necessary to establish right, title, or interest.
 - b. A statement of the maximum daily quantity of water to be extracted, from all extraction points operated by the same individual, entity, consortium, association of individuals or entities.
 - c. The location(s) of the points of extraction.
 - d. The method(s) of extraction.
 - e. A copy of all applications, exhibits and reports for such extraction filed or to be filed with any other municipal authority or any agency or department of the State of Maine, including as required by M.R.S.A. 2660 *et seq.* (transport of water for commercial purposes) of under applicable

Department of Health and Human Services rules and regulations, and any agency or department of the United States.

- f. A copy of any permit, approval or denial for such extraction as may have been issued by any agency referred to in (e) above.
- g. A written report, certified to the Planning Board procured and paid for by the applicant, of a hydrogeologic investigation and study, conducted and prepared by a licensed professional hydrogeologist, geologist, hydrologist, registered professional engineer or other appropriately licensed professional possessing, in the judgment of the Planning Board, comparable credentials and qualifications. This report must address at least the following:
 - (1) The rates of drawdown and recharge of any aquifer or ground water source as may have been established by a pumping or "stress test" or other similar testing regimen in accordance with standards within the geology and engineering professions.
 - (2) The characteristic of the aquifer or other ground source, including rates of drawdown and recharge, sustainable extraction rates, aquifer boundaries, recharge areas, impacts on the water table, and impacts on any and all existing water bodies including but not limited to lakes, ponds, rivers, streams and wetland areas and private wells or other existing extraction locations within the zone of contribution.
 - (3) Possible effects on the aquifer or other groundwater resources that might result in the disturbance of existing minerals, such as, but not limited to, iron, manganese, arsenic, and uranium, and any health hazards raised by such disturbance(s) or other impacts, including issues such as drinking water turbidity, clarity and odor, shall also be noted.
- h. The application shall be accompanied by written notification of the application and an explanation of the intent, scope, and location of the proposed water extraction, in terms readily understandable to a layman, to be addressed and mailed to, via certified mail, return receipt requested, the following:
 - (1) The owners of record of all parcels of land lying above the aquifer or other water source cited in the application.
 - (2) The owners of record of all parcels of land abutting the applicant's land and/or within the 3,000-ft wellhead protection zone or other water source cited in the application.
 - (3) The owners of record of all parcels of land having frontage on any body of water whether lake, pond, river, stream or wetland within the 3,000-ft wellhead protection zone or other water source cited in the application, even if such

individual parcels may themselves lie beyond the wellhead protection zone or other water source.

- (4) For purposes of these notification requirements, an applicant is entitled to rely on the information on file at the Town Clerk's office as represented by the Town's current assessors' maps and the mailing addresses maintained by the Town as to the owners of the affected parcels shown thereon. Actual posting of the certified mail notices is not required until the application is declared or deemed to be complete. See D (6) below.
 - (5) For good cause shown, the above notice requirements may be modified by the Planning Board where, for example, it can be established that a body of water, or portion of which, lying within the 3,000-ft wellhead protection zone or other water source, extends so far from the proposed extraction point(s) that actual notice to the owners of all land having frontage on that body of water is not necessary.
- i. A small-scale site plan depicting at least the following:
 - (1) The limits (outside perimeter) of the aquifer or other water source cited in the application, and the bounds of the land of the applicant.
 - (2) The location of all water bodies located within the 3,000-ft wellhead protection zone or other water source.
 - (3) The location(s) of the proposed extraction points.
 - (4) The existing network of public or private roads leading to or by the extraction point(s).
 - (5) Any proposed new roads or driveways to be constructed for access to and egress from the extraction point(s), and the point(s) of intersection of such proposed roads or driveways with existing roads.
 - (6) Any existing or proposed utility lines to be utilized in the extraction operation(s).
 - (7) The location and type of test wells or other monitoring methods.
 - (8) Any existing or proposed pipes, pipelines, aqueducts, or similar conduits that are intended to convey extracted water from the extraction point(s) towards the intended end user, if any part of the extracted water is ultimately to be transported outside the geographic limits of the Town of Perry.
 - (9) Any other relevant and material detail(s) bearing on the proposed extraction process the omission of which would tend to hinder the ability of the reviewing authority, affected land owners or the public from developing a full understanding of the scope and impact of the proposal.
 - j. A large scale site plan depicting at least the following:

- (1) A detailed plan of the extraction point(s) including without limitation well heads, pumping facilities, monitoring or test wells, buildings, sheds, paving, vehicular drives, parking and turn around, utility lines, fencing, access roads or driveways, elevation and contour lines.
 - (2) Any other relevant and material detail(s) bearing on the proposed extraction process, the omission of which would tend to hinder the ability of the reviewing authority, affected landowners or the public from developing a full understanding of the scope and impact of the proposal.
- k. A complaint protocol.
 - l. The Planning Board may also request additional application materials it deems necessary to determine whether an application is in compliance with this ordinance.

D. Application Process

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

1. Within thirty (30) days from the date of submission the Planning Board shall conduct a preliminary review of the application solely for the purpose of determining whether the application is complete as required by this ordinance.
2. For good cause shown, and upon receipt of confirmatory independent technical advice, the Planning Board may waive one or more of the application details upon a determination that such details are unnecessary, unobtainable as a practical matter or duplicative, and that such waiver would not tend to hinder the ability of the Planning Board, affected landowners or the public from developing a full understanding of the scope and impact of the proposal.
3. If the Planning Board deems the application incomplete in any material or relevant respect, it shall so inform the applicant by the best practical means, either in writing or verbally, at a regularly scheduled meeting of the Planning Board, at which time the applicant shall have sixty (60) days to complete its application in accordance with this ordinance, upon failure of which the application shall be deemed withdrawn. The Planning Board may, at its discretion, increase the time period to complete an application upon a showing of good cause.
4. Upon finding the application complete, the Planning Board will have thirty (30) days to determine whether to recommend to the Board of Selectmen the need to acquire the services of a third-party professional/consultant to assist the Planning Board in its review of the application (see Article IV, section C, part 2a). If the Town engages a third-party professional/consultant, the Planning Board's further review of the application shall not continue until the applicant deposits the requisite funds to be held in escrow per Article IV above.
5. The Planning Board shall have 30 days to schedule a public hearing on the application from either (i) the date when Planning Board determines the application is complete; or (ii) if the Town retains third-party

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

6. Any review of the application by the Planning Board or its agents for completeness is preliminary only, is not to be deemed a substantive review, and confers no vested rights or pending proceeding status upon the applicant or application.
7. Applicant's obligations of written notification via certified mail or property owners as set forth in Article IV (C) (3) (h) above shall not commence until the application is declared or deemed complete under this ordinance.

E. Review Process; Hearing Process

1. The completed application shall be reviewed by the Planning Board at a public hearing convened for that purpose, no less than 7 days following published notice in a newspaper of general circulation within the Town of Perry and posting of notices at three conspicuous public places within the Town. Confirmation on the hearing date is stipulated on proof that certified mail notices have been sent to all affected landowners, as previously set forth in this ordinance, no less than 10 days prior to the public hearing date.
2. The Planning Board shall be entitled to adopt whatever procedural rules for the hearing including the imposition of reasonable time limits for the presentations of the applicant, opponents if any, and the general public, that it deems appropriate, fair, and reasonably calculated to afford a full consideration of the issues pertaining to the application.

F. Decision: Performance Standards

1. Upon the adjournment of the public hearing, the Planning Board shall schedule a public session of the Planning Board, to commence not later than forty-five (45) days from the final adjournment of the public hearing, to deliberate and render a decision.
2. The Planning Board may:
 - a. Approve the application;
 - b. Deny the application, or
 - c. Approve the application with conditions.
3. Any approval shall specify the maximum daily quantity of water authorized for extraction, and any increase in such daily totals shall require further application and review in accordance with this ordinance.
4. The Planning Board shall issue a written decision, with findings of fact and rulings and conclusions, not later than thirty (30) days from the date on which it votes at a public session to approve, deny, or approve with conditions, and a copy of such written decision shall thereupon promptly be provided to applicant, and otherwise be available publicly.

G. Administrative Appeals

- a. Any aggrieved person may appeal a decision of the Planning Board under this ordinance within 30 days of issuance of the Planning Board's written decision to the Perry Board of Appeals, which shall not conduct a *de novo* review but instead shall conduct a purely appellate review.
- b. [OR, Any aggrieved person may appeal a decision of the Planning Board directly to the Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.]

Article V. PERFORMANCE STANDARDS

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

A. Geologic and Hydrologic Standards

1. The quantity of water to be extracted will not have an adverse effect upon ground water flow patterns relating to the aquifer, its recharge areas, or other ground water sources within the Town.
2. The quantity of water to be extracted will not adversely impact, diminish or alter any surface waters within the Town, including during any periods of drought.
3. The quantity of water to be extracted will not cause any ground subsidence beyond the property lines of applicant's property.
4. The quantity of water to be extracted will not adversely affect the long-term sustainability of the aquifer, or its recharge areas, or other groundwater source, including during periods of drought.
5. The Proposed extraction will not create a health risk or adversely affect drinking water turbidity, clarity, odor or the general quality of the drinking water. Ongoing follow-up monthly testing for this purpose is to be undertaken by the developer with results of such tests provided in writing to the Perry Code Enforcement Officer (CEO) on a monthly basis.
6. The establishment of an ongoing follow-up monitoring system and development of a system of recording and documenting extraction and recharge data, within the zone of contribution, is to be reported in writing to the Perry CEO on at least a monthly basis. At least 25% of monitoring locations shall be at private wells located within the zone of contribution, provided applicant obtains landowner permission for such testing.
7. The hydrogeology for aquifers within the lands of the Town of Perry can sometimes be described as being nonuniform in shape, size and depth of a given aquifer. Accordingly the effects of drawdown on private wells from water extraction activities may occur considerably beyond the customary 3000-foot wellhead protection zone. As such, the scope of effects of water extraction on private wells will likely need to be determined empirically and specifically for each water extraction project. To determine the scope of effects, both pre- and post-production well water sampling will need to be planned and done. It is recommended that the Planning Board and its experts work with the applicant and its experts to determine the best estimate of the scope of effects on water quantity and quality for private wells. Baseline sampling of water quantity and

quality will then be done for all private wells within the estimated zone of effect. Post production, follow-up sampling will be provided periodically to owners of private wells to confirm that the water extraction activities have not adversely affected their water quantity and quality. These activities will be paid by the applicant.

B. Impact on the General Vicinity.

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

C. Complaint Protocol.

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

Article VIII. OPERATIONAL PERMIT AUTHORITY

An operational permit issued by the Perry CEO is required before commencement of operations of any large scale water extraction facility covered by this ordinance. Large scale water extraction facilities not covered by this ordinance are not required to obtain an operational permit. A valid operational permit is also required to continue operations of a large scale water extraction facility covered by this ordinance. An operational permit is valid for two (2) years from the date of issuance, and is not transferrable. Operation of a large scale water extraction facility that is subject to this ordinance without operational authority shall be a violation of this ordinance.

Any person intending to operate a large scale water extraction facility ["Operator"] covered by this ordinance in the Town of Perry must submit the following information to the CEO for review:

- A. Name of Operator. The Operator's name, address and phone number.
- B. Primary Representative of Operator. The name, address, and phone number of the primary representative of the Operator.
- C. Permits. Copies of all local, state and/or federal permits or other governmental approvals obtained by the Operator to operate the large scale water extraction facility.
- D. Agreements. A list of the name, address, Tax Map and Lot Number(s), and phone numbers for all properties that are the subject of agreements relating to the proposed large scale water extraction facility.
- E. Compliance. A signed statement from the Operator agreeing to comply with all terms and conditions of this ordinance and any permits or approvals issued thereunder.
- F. Technical and Financial Capacity. Evidence of technical and financial capacity to comply with the provisions of this ordinance.
- G. Fee. A fee in the amount as determined by the Board of Selectmen in its adopted schedule of fees.

Article IX. ENFORCEMENT AND SEVERABILITY

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

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

Article IX. ANNUAL REPORTS FROM EXTRACTING ENTITY.

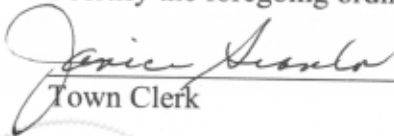
Annual reports to the Planning Board shall include but not be limited to:

- A. Amount of water extracted and dates of extraction.
- B. Test results of extracted water.

Article X. EFFECTIVE DATE

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

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



Town Clerk