

ORDINANCE GOVERNING THE LARGE SCALE PUMPING OR EXTRACTION OF GROUNDWATER, SPRING WATER AND/OR WATER FROM AQUIFERS WITHIN THE MUNICIPALITY OF FREEDOM, MAINE

Article I. Purpose

The purpose of this ordinance is to protect the quality and quantity of groundwater, spring water and/or water in aquifers and their recharge areas located wholly or partially within the Town of Freedom, to insure 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 the avoidance of any interruption or degradation of water quality and quantity to members of the general public within the town, and generally to protect the health, safety and welfare of persons dependent upon such water supplies.

Article II. Authority

This ordinance is adopted and enacted pursuant to the Maine Constitution, Article VIII, Part Second, 30 A MRSA 2101 et seq (“Municipal Home Rule”), and 30A MRSA 3001 – 3006 (“Ordinance Power”).

Article III. Definitions

Words and phrases, unless their context requires otherwise, shall be defined as follows: first as set forth below, second in accordance with their generally accepted technical meaning within the involved scientific disciplines, third as defined by Maine Statutes, and fourth their common dictionary definition.

“Aquifer” means a saturated permeable geologic unit that can transmit significant quantities of water under ordinary hydraulic gradients.

“Extraction” (or “water extraction” or “extraction of water”) means withdrawal, removal, diversion, taking, or collection by any means of water from ground water sources, aquifers, springs, wells, pumps or similar.

“Extraction point” or “Extraction facility” means the physical location where water is extracted, whether by well, pump, pipeline, catchment, or other similar method.

“Large scale water extraction” means extraction of water from ground water sources, aquifers, springs, wells or similar in a total daily amount on any given day of 5000 gallons or more, as extracted by the same individual or entity, or consortium or association of individuals or entities, regardless of the number of

extraction facilities utilized.

“Reviewing authority”, “reviewing agency”, “Board of Selectmen” and “Boards” are used interchangeably in this ordinance and have the same meaning.

“Water bodies” or “surface water(s)” means lakes, ponds, river, streams, wetlands and similar.

“Zone of Contribution” means that area of an aquifer that contributes water to a well or other extraction point under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at approved yield with no recharge from precipitation). It is bounded by the groundwater divides that result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases the zone of contribution shall extend upgradient to its point of intersection with prevailing hydrogeologic boundaries (a groundwater flow divide, a contact with till or bedrock, or a recharge boundary).

Article IV. Large Scale Water Extraction

A. Permit Required

The daily (meaning on any given day) extraction of more than 5000 gallons of ground water, spring water and/or water from aquifers or their recharge areas by any one entity or person, or consortium or association of entities or persons acting in concert, regardless of the number of extraction facilities utilized, shall require a written permit issued by the Board of Selectmen, after public hearing and opportunity for public comment.

B. Inapplicability

The requirement of review and approval shall not apply to extraction of water which is to be used within the Town of Freedom for standard agricultural purposes; drinking water and domestic water supply to private residences within the Town of Freedom; fire suppression; or for on site residential, commercial and industrial purposes within the Town of Freedom to the limit of their historical use of water which exist as of the date of the adoption of this ordinance.

C. Application Requirements

1. The application shall be in writing and be accompanied by site plans prepared by a licensed surveyor, licensed engineer, or similar appropriately licensed

professional.

2. 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 outright ownership and title as evidenced by a deed duly recorded in the Waldo County Registry of Deeds, the entire document/documentation (other than reference(s) to purchase price and financing terms, which may be redacted) whether by lease, option, contract or otherwise establishing right, title and interest shall be submitted with the application.

(b) a statement of the total maximum daily quantity of water to be extracted, from all extraction points operated by the same individual or entity, or consortium or association of individuals or entities.

(c) the location(s) of the points of extraction.

(d) the method(s) of extraction.

(e) the proposed use for which the water is to be extracted, including the identity of any end user of the extracted water whose facilities for use, processing, transporting, storage, bottling, sales or other similar activities are located outside the Town of Freedom.

(f) a copy of any application and 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 22 MRSA 2660 et seq (transport of water for commercial purposes,) or under applicable Department of Human Services rules and regulations.

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

(h) a written report, certified to the Freedom Board of Selectmen 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 Board of Selectmen comparable credentials and qualification. The report must address at least the following.

(1) the rates of draw down and recharge of any aquifer or other ground water source as may have been established by a pumping or "stress test" or other similar testing regime in accordance with accepted standards within the geology

and engineering professions.

(2) The characteristics of the aquifer or other ground water source, including rates of draw down 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 ground water resources which 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 aroma.

3. The application shall be accompanied by:

(a) 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 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 lying within 500 feet of the outside perimeter of the aquifer 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 500 feet of the outside perimeter of the aquifer or other water source cited in the application, even though such individual parcels may themselves lie more than 500 feet from the outside perimeter of said aquifer or other water source.

(4) For purposes of these notification requirements an applicant is entitled to rely on the information on file at the Freedom Town Office as represented by its most recent 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 Board of Selectmen where, for example, it can be established that a body of water, a portion of which lies within 500 feet of the outside perimeter of the

aquifer 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.

(b) 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 500 feet of the outside perimeter of the aquifer 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 monitoring and test wells.

(8) Any existing or proposed pipes, pipelines, aqueducts or similar that are intended to facilitate transport of 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 Freedom.

(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.

(c) 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.

D. Application Process

1. The entire application, including studies, reports, site plans and all other items referred to in Article IV (C) above shall be submitted to the Board of Selectmen in triplicate.

2. The Board of Selectmen shall have thirty (30) days from the date of submission to conduct a preliminary review of the application solely for the purpose of determining whether the application is complete as required by this ordinance. For good cause shown, and upon receipt of confirmatory independent technical advice, the Board of Selectmen 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 Board, affected landowners or the public from developing a full understanding of the scope and impact of the proposal.

3. If within said thirty (30) day period the Board of Selectmen deem the application incomplete in any material or relevant respect it shall so inform the applicant by the best practical means, either by writing or verbally at a regularly scheduled meeting of the Board at which the applicant or its duly authorized representative is present after which the applicant shall have a reasonable period of time, not to exceed sixty (60) days to complete its application in accordance with this ordinance, upon failure of which the application shall be deemed withdrawn.

4. If by the end of said thirty (30) day period for review for completeness the Board of Selectmen have not informed the applicant the application is incomplete it shall as a result be deemed complete, in which case the Board shall schedule a public hearing on the application at a date not later than sixty (60) days from the date the application was originally submitted, or not later than sixty (60) days from the date a supplemented application originally deemed incomplete, was reviewed for completeness and declared (or deemed by the passage of a thirty (30) day period) complete.

5. Any review of the application by the Board of Selectmen or its agents for completeness is preliminary only and is not to be deemed a substantive review, and confers no vested rights upon the applicant or under the application. Substantive review shall not be deemed to occur until the convening of a public hearing on the application under this ordinance.

6. Applicant's obligations of written notification via certified mail of property

owners as set forth in Article IV (C) (3) above shall not accrue 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 Board of Selectmen at a public hearing convened for that purpose, pursuant to 15 days' published notice in a newspaper of general circulation within the Town of Freedom and posting of notice at three conspicuous public places within the Town, and upon confirmation on the hearing date that certified mail notice has been sent to all affected landowners as previously set forth in this ordinance.

2. The Board of Selectmen shall be entitled to adopt whatever procedural rules for the hearing, including the imposition of reasonable time limits for the presentations of the applicants, opponents if any, and the general public, 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 Board of Selectmen shall schedule a public session of the board, to occur not later than thirty (30) days from the final adjournment of the public hearing, to deliberate and render a decision.

2. The Board of Selectmen's decision may be:

(a) to approve the application;

(b) to deny the application; or

(c) to approve the application conditionally, with conditions or stipulations upon the satisfactory completion of which the application will be finally approved. Provided however, any approval (conditional or unconditional) shall require the Board's determination that the applicant has satisfied all of the performance standards set forth below.

(d) any approval shall specify that it is only for a daily extraction total not exceeding the maximum daily quantity set forth in the application, and any increase in such daily totals shall require further application and review in accordance with this ordinance.

3. The 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.

4. Any extraction authority granted hereunder shall be for a period not to exceed three (3) years, but may be renewed subject to the same criteria contained herein.

With respect to an application for a permit renewal if, after notice and hearing as referred to in Article IV (E) above, the reviewing authority finds the following, a renewal permit for another three (3) year period shall be issued:

(a) there is no increase in the permit holder's extraction activities in terms of the quantity of water to be extracted; and

(b) there is no change in the location or configuration of the extraction facility; and

(c) there has been no material failure by the permit holder to comply with any conditions of the expiring permit; and

(d) there has been no material failure by the permit holder to meet the performance standards applicable to the expiring permit; and

(e) there is no significant, credible evidence that the permit holder's continuing operations would be unable to meet the performance standards of the ordinance during any renewal period.

Any application for a renewal permit must be filed with the reviewing authority not less than 90 days prior to the expiration of the existing permit.

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 establishing and demonstrating compliance with which is solely the applicant's. 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 cause undesirable changes in 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 negatively 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 issues such as drinking water turbidity, clarity or aroma resulting from the disturbance of existing minerals, or from any other cause, with ongoing follow up monthly testing for this purpose, results to be provided in writing to the Freedom Board of Selectmen on at least 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 date, within the zone of contribution, to be reported in writing to the Freedom Code Enforcement Officer on at least a monthly basis. At least 25% of monitoring locations shall be at private wells located within the zone of contribution.

B. Impacts on the General Vicinity

1. The applicant assumes any and all liability for the loss, interruption, degradation or interference with the preexisting beneficial domestic use of groundwater by a land owner or lawful land occupant, or other public or private water supply, caused by applicant's withdrawal or extraction of water.

For purposes of this section "beneficial domestic use", "groundwater" and "preexisting use" shall be as defined by 38 M RSA 404 – 1 A-C.

For purposes of this section liability of applicant shall be for compensatory damages only, and shall be limited to the following:

(a) all costs necessary to restore the landowner or lawful land occupant to a status which is reasonably equivalent in terms of quantity and quality of ground water, made available on a similarly accessible and economic basis;

(b) compensatory damages for loss or damage to property, including, without limitation, the loss of habitability of residence, caused to the landowner or lawful land occupant by reason of the interference prior to restoration of the status provided for a subparagraph (a); and

(c) reasonable costs, including expert witness and attorney fees incurred in initiating and prosecuting an action when necessary to secure a judgment granting the relief provided for under this section.

The reviewing authority shall require the furnishing of a bond or other performance guaranty it deems of equivalent security to secure the applicant's obligations under this section.

2. Provision shall be made for vehicular access to extraction facility(ies) and for circulation, loading and unloading upon the lot 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. Driveways or access roads to the extraction facility(ies) shall conform to minimum Town Road standards and approved by the road commissioner for meeting standards for public health and safety.

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 the premature failure, aging or diminished utility of those roads.

5. To the extent the extraction facility(ies) will be served by pipes, pipelines, aqueducts or similar that such installations will be sited and constructed in a manner which will not interrupt the public's use of any existing roadway, interrupt the public's access to any public facility, great pond or similar, interrupt private access to private property, or pose the risk of damage to any property along or through which such installation traverses as a result of any failure or malfunction which might cause ponding, erosion, run off or similar.

6. The proposed extraction and activities incident to such extraction such as increased traffic (volume and type), parking, hours of operation, noise, glare from lights, or similar potential for nuisances are unlikely to cause a negative impact on adjacent properties, and the nearby vicinity as a whole.

C. Extraction for Commercial Purposes and/or Bulk Water Transport Out of Freedom

In addition to the foregoing performance standards, any application for an extraction permit, which includes or contemplates the transport of water in excess of 10 gallons per day out of the Town of Freedom, must also meet the following standards and requirements:

1. The Town must have received a copy of any application filed with any state agency, under the provisions of 22 MRSA 2660-A, or the Bulk Water Transport Rules of the Department of Human Services, contemporaneous with its filing with the State and a copy of any decision pertaining thereto.
2. Transport of the water will not constitute a threat to public health, safety or welfare,
3. Water is not available naturally in the location, to which it will be transported,
4. Failure to authorize transport of the water would create a substantial hardship to the potential recipient of the water, and
5. The water withdrawal will not adversely affect existing uses of groundwater or surface water resources, including private wells.

Article VI: Independent Expert Assistance

If the reviewing authority reasonably determines it requires independent expert assistance to assist it in its preliminary review of the application, or in evaluating the substance of the application at a public hearing, or in developing appropriate conditions of approval, it may engage the services of such expert assistance, to serve as the reviewing authority's own expert. To the extent the projected or estimated cost of such assistance exceeds the existing town appropriation for such assistance, if any, the applicant shall be required to pay to the Town, in advance of the scheduling of any public hearing, a sum equal to said projected or estimated cost, the failure of which payment shall excuse the reviewing authority from scheduling any public hearing until such payment is made in full.

Article VII: Concurrent Jurisdiction

As applicable, jurisdiction of the Board of Selectmen under this ordinance is concurrent with such jurisdiction as may presently be vested in the Freedom Planning Board and/or the Freedom Board of Appeals and the Freedom Code Enforcement Office/Local Plumbing Inspector and is not intended to divest them of existing jurisdiction as applicable, but rather establishes and imposes additional requirements and procedures as set forth herein.

Article VIII: Enforcement and Severability

This ordinance may be enforced by the municipal officers of the Town of Freedom under 30 A MRSA 4452, the fines and penalties set forth therein to apply hereto. Should any section or provisions 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 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.

Any appeal of any suspension or revocation of a permit shall be to the Board of Appeals.

Article IX: Effective Date

This ordinance shall become effective immediately upon its adoption and enactment by vote of the legislative body of the town at a town meeting.

Adopted at Annual Town Meeting: March 25, 2006