

Town of Brownfield, Maine WATER EXTRACTION ORDINANCE

SECTION I. AUTHORITY

This ordinance is adopted and enacted pursuant to the Maine Constitution, Article VIII, Part Second, 30-A M.R.S.A. § 2101 *et seq.* ("Municipal Home Rule") 30-A M.R.S.A. § 3001-3006 ("Ordinance Power"), and 22 M.R.S.A. § 2642.

SECTION II. APPLICABILITY

This ordinance shall be known as the "Town of Brownfield Water Extraction Ordinance" and is referred to herein as "this Ordinance."

The Town of Brownfield is referred to herein as "the Town."

All capitalized phrases and words that would normally not be capitalized in construction and may have more than one meaning are defined in section XVII for the purposes of this ordinance.

This Ordinance applies to all Large-Scale Water Extraction (10,000 to 20,000 gallons per day) and Small-Scale Water Extractions (2,000 to 9,999 gallons per day) within the Town of Brownfield. Extraction of 1,999 gallons or less per day are exempt from this Ordinance.

The Town does not permit any extraction of water with an aggregate total greater than 20,000 gallons per day.

Commercial uses of water that extract between 2,000 and 9,999 gallons per day in aggregate total are subject to the same standards unless expressly indicated.

Any Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation, as defined herein, shall require a written Use Permit issued by the Planning Board, after a Public Hearing and opportunity for public comment. Any transfer of ownership of all or part of a permitted Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation or the land on which the Operation features sit must obtain prior written Use Permit approval from the Planning Board and shall be subject to the same review processes and standards as a new Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation.

A Use Permit, with or without conditions, for a Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation shall be valid for one year from the date of issuance. A Use Permit may be renewed annually by the Code Enforcement Office ("CEO"), subject to the requirements set forth in Section VII ("Permit Renewal").

Any observation wells installed to conduct Pumping Tests in anticipation of a proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation shall require a written Building Permit issued by the CEO, subject to the requirements set forth in Section IX ("Building Permits for Observation Wells").

Non-Commercial Water Extraction Operations are exempted from the requirements of this Ordinance.

All other commercial and/or non-commercial applications carried on completely within the borders of the Town and whose products are not transported for sale outside the borders of the Town that would be considered a Small-Scale Water Extraction Operation are exempted from the requirements of this ordinance.

Any Extraction operation for commercial sale, by any entity, person, consortium, or association of entities or persons acting in concert, of more than an aggregate of 20,000 gallons per day of Groundwater, Spring water, surface water, or water from an Aquifer or its recharge area, regardless of the number of Extraction sources or facilities used, is prohibited under this Ordinance.

Nothing in this Ordinance nor any decisions made by any reviewing authority under this Ordinance grant Groundwater rights other than those that already exist under Maine Law. Additionally, nothing in the Ordinance is intended to derogate from any rights granted under 38 M.R.S.A. § 404 ("Ground Water Rights").

SECTION III. PURPOSES

The purposes of this Ordinance are:

- A. To protect the quality and quantity of groundwater, spring water, and water in aquifers and their recharge areas, as well as surface waters including lakes, ponds, wetlands, rivers, and streams located wholly or partially within the Town;
- B. To establish an orderly process and standards for the review of proposed Large-Scale Water Extraction Operations or Small-Scale Water Extraction Operations, as defined here, in order to ensure the sustainability and quality of groundwater, spring water, water in aquifers and their recharge areas, and surface waters; prevent the interruption to or despoliation of healthy sources of water supply to the public; protect private and public properties from environmental degradation, pollution, noise impacts, and traffic impacts; protect existing and new public roadways from degradation; minimize impairment to vegetative growth, including forested areas; ensure the continuing stability and health of topsoil and surface lands; and provide for equitable access to groundwater, spring water, and water in aquifers and their recharge areas, and protect the health, safety, and welfare of persons dependent upon such water supplies; and
- C. To protect the health, safety, and welfare of the residents of and visitors to the Town.

SECTION IV. ADMINISTRATIVE PROCEDURES

A. Written Agenda Required

The Planning Board shall prepare in accordance with the Planning Board by-laws a written agenda for each scheduled meeting.

B. Sketch Plan Meeting and Site Inspection

The Planning Board shall conduct a sketch plan meeting and a site inspection on each proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation.

1. Purpose. The purpose of the sketch plan meeting and site inspection is for the applicant to present general information regarding the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation to the Planning Board and receive the Planning Board's comments prior to the expenditure of substantial sums of money by the applicant on required application materials.
2. Sketch Plan Submissions. Nine (9) copies (additional copies may be required as deemed necessary) of the sketch plan and all supporting materials must be submitted at least 14 days prior to a regularly scheduled Planning Board meeting in order to be placed on the Planning Board's agenda. The sketch plan shall provide the name of the property's owner(s) as it appears on the deed, the Deed(s)'s Book and Page number(s) and the Tax Map and Parcel number(s). It shall show, in simple sketch form, the proposed layout of the Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation, including pumping stations, roads, parking areas, impervious areas, buildings, areas of vegetation clearing, and all other proposed features in relation to existing conditions. The sketch plan shall show, in a general manner, existing above-ground and below-ground site conditions including aquifers and their recharge areas; surface waters (including lakes, ponds, wetlands, rivers and streams); vegetative cover; steep slopes; public and private roads, rights-of-way, and easements; utility corridors; structures and other improvements. The sketch plan shall include a written landscaping and vegetation plan defining how the site shall be restored to as nearly a natural state as is practical and the means/methods to be used when the site is Discontinued, as defined by the terms of this Ordinance. The sketch plan shall be supplemented with a written project narrative, with general information to describe or outline the existing conditions of the site and a full description of the proposed Operation. The narrative should include general proposals for how infrastructure, noise, and traffic arising from the Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation shall be managed and maintained. The sketch plan shall be accompanied by a nonrefundable sketch plan application fee, payable by check to the Town.
3. Notice of Sketch Plan Submission. Concurrent with the filing of the sketch plan to the Planning Board, the applicant shall notify by Certified Mail (return receipt request) all owners of property located within 1,500 feet of any property line (within the Town of Brownfield) of the site of the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation and specifying the location of the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation; (2) notify in writing by First Class mail to all owners of property between 1,501 and 3,000 feet of any property line (within the Town of Brownfield) of the site of the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation and specifying the location of the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation; (3) notify the municipal clerk of any neighboring municipalities if any portion of the proposed Operation or any portion of any Aquifer or recharge area from which water is proposed to be extracted abuts or

crosses a Town boundary. The applicant shall provide evidence of such notices to the Planning Board.

4. Sketch Plan Meeting. The applicant shall present the pre-application sketch plan and make a verbal presentation regarding the site and the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation. Following the applicant's presentation, the Planning Board may ask questions, point out potential problems or issues for future discussion, and make suggestions to be incorporated by the applicant into the subsequent application. Substantive, lengthy discussions about compliance with review standards or the consideration of waiver requests shall be postponed until the Planning Board's review of the full application. After reviewing the Sketch Plan with a licensed peer-review professional of the Town's choosing, the Planning Board shall select a date for the on-site inspection. The cost of all studies and other work performed by any and all peer-review professionals obtained by the Town shall be reimbursed by the applicant.
5. Inspection. Within 30 days of the sketch plan meeting, depending on the availability of outside licensed professionals of the Town's choosing, the Planning Board shall, in accordance with its By-Laws, hold an on-site inspection of the property. The Board may postpone the on-site inspection when there is inclement weather or snow on the ground. Notification of on-site inspections shall be made by the applicant as described in the rules for Public Hearings that require notification by Certified mail. Ample time shall be given to allow public attendance. At the beginning of the inspection, the guidelines governing the site review process shall be read to all present at the site. Any costs incurred by the Town, including fees for licensed professionals and providing the notice required herein, shall be borne by the applicant out of the sketch plan application fee. Additional cost shall be borne by the applicant.
6. Rights Not Vested. The sketch plan meeting, the submittal or review of the sketch plan, or the on-site inspection shall not be considered the initiation of the Planning Board's review or a pending proceeding.
7. Establishment of File. Upon submission of the pre-application sketch plan, the Planning Board shall establish a file for the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation. All correspondence and submissions, both digital and hard copy, regarding the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation, shall be maintained in the file.

C. Application Submission

1. Procedure. Within six (6) months after the on-site inspection by the Planning Board, the applicant shall submit an application for a Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation at least 14 days prior to a scheduled meeting of the Planning Board. Failure to submit an application within six (6) months shall require resubmission of the sketch plan to the Planning Board.

2. Application. Except as otherwise provided in subsections (j), (k), and (l), an application for a Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation must include, at a minimum, the following information, all of which must be supplied at the applicant's own expense:
- a. Evidence of the applicant's right, title, or interest in the properties associated with the proposed Operation, by deed, purchase and sale agreement, option to purchase, or some other proof of interest. If such evidence is other than outright ownership and title as evidenced by a deed duly recorded in the Oxford County Registry of Deeds, the entire unredacted document or documentation—whether by lease, option, contract or **otherwise**—establishing the right, title, or interest shall be submitted, and said document shall establish the applicant's right to utilize the subject property for purposes of Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation.
 - b. A copy of the most recently recorded deed or deeds for the properties associated with the proposed Operation. A copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the properties.
 - c. A description of the proposal, including the proposed use for which the water is to be extracted and the general locations of the facilities intended to be used for Extraction, processing, transporting, storage, bottling, and other related activities located within and outside of the Town.
 - d. Copies of applications and related materials submitted by the applicant to secure any required municipal, state, and federal approvals for all or part of the Operation, including as required by 22 M.R.S. § 2660-A *et seq.*, the Maine Department of Health and Human Services (MDHHS) subsurface wastewater disposal rules and other applicable rules, and the Maine Department of Environmental Protection (MDEP) pursuant to the Site Location law is applicable or a discharge permit is required. If any such applications or related materials are submitted after the filing of the initial application, the applicant shall immediately provide such materials to the Planning Board as they become available.
 - e. Copies of all permits, approvals, or denials for such Extraction as may have been issued by any agency referred to in subparagraph d, above.
 - f. A site plan identifying the location of the following features within all the properties associated with the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation, and a separate map identifying any of the following features located adjacent to all of the properties associated with the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation.

- i. Property boundary lines, the number of acres within the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation, and the names of adjacent landowners;
 - ii. All surface waters, including lakes, ponds, rivers, streams, brooks, and wetlands;
 - iii. The limits (outside perimeter) of the Aquifer or other water source cited in the application;
 - iv. Existing vegetative cover type, unusually large specimen trees, general site topography, steep slopes, and other physical features of the site;
 - v. Areas where existing vegetative cover is proposed to be removed and areas with any proposed restrictions on vegetation clearing;
 - vi. The location of all proposed Extraction points;
 - vii. The location and type of monitoring and test wells;
 - viii. The location and size of existing and proposed structures, public and private roads, driveways, utility lines, subsurface wastewater disposal systems, and other man-made features, including water mains, culverts, drainage ways, utilities, stormwater management features, erosion and sedimentation control features, sewers, culverts, streets, highways, and easements; reviewed and reported on by the appropriate agency.
 - ix. Any existing or proposed pipes, pipelines, aqueducts, or similar features that are intended to facilitate transport of extracted water from the Extraction point(s) towards the intended end user, and list any properties involved but not owned;
 - x. Areas identified by the State of Maine Beginning with Habitat program, including unique natural areas, and measures for preservation of values which qualify the areas for such designation; and
 - xi. Any other relevant and material details bearing on the proposal, the omission of which would 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.
- g. A detailed site plan of all proposed Extraction points, 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.

- h. A statement of the quantity of Groundwater and/or Spring water to be extracted, expressed as (i) a maximum annual total, (ii) the maximum monthly rate by month, and (iii) the maximum daily rate for each Extraction site and in the aggregate for the entire proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation.
- i. A detailed landscaping and vegetation plan, to be completed within six (6) months the Discontinuance of the approved Large-Scale Water Extraction or Small-Scale Water Extraction, defining how the site will be restored to a natural and/or the original state as before any development began. Said plan must include specific intentions and designs for the proper Discontinuation and restoration of the site, including but not limited to roads, buildings, extraction sites, and other improvements.

Small-Scale Water Extraction Operations are exempt from sections j, k, and l.

- j. Applications for Large-Scale Water Extraction Operations (but not for Small-Scale Water Extraction Operations) must include a written report of a hydrogeologic investigation conducted by a licensed professional geologist or registered professional engineer, which must include the following information:
 - i. A map of the Aquifer or Aquifers tributary to the wells, Springs, and excavations from which water is proposed to be extracted, in sufficient detail to support a calculation of sustained yield during a drought with a probability of 1 in 10 years, as well as an estimate of any potential interaction between the Aquifer and adjacent Aquifers.
 - ii. Aquifer physical characteristics (including Aquifer type, depth, thickness, Storativity, Transmissivity, and nature – confined or unconfined), Aquifer performance characteristics and hydraulic properties, the rates of draw-down and recharge, and sustainable yearly, monthly (by month), and daily Extraction rates, Aquifer boundaries, recharge areas, as well as the Cone of Depression which could develop as a result of the proposed Large-Scale Water Extraction Operation.
 - iii. An assessment of potential impacts of the proposed Large-Scale Water Extraction Operation on the water table in all tributary Aquifers, water bodies (including lakes, ponds, rivers, streams and wetlands), and private or public wells or other drinking water sources located within 1,000 feet of the proposed Extraction facilities. If, however, the Aquifer from which the applicant proposes to extract water extends more than 1,000 feet in horizontal diameter, then the impact upon the entire Aquifer must be assessed.

- iv. An inventory of all existing and other reasonably anticipated Extractions from the water sources proposed to serve Large-Scale Water Extraction Operation, and an assessment of the cumulative impacts of such Extractions combined with the proposed Large-Scale Water Extraction Operation. This cumulative impact assessment must include the information required by subparagraphs i, ii, and iii, above.
 - v. Results of Pumping Tests and the predicted effect on water levels of proposed pumping rates.
 - vi. An assessment of potential impacts on the Aquifer or other Groundwater resources which might result in the disturbance of existing minerals including without limitation iron, manganese, arsenic, and uranium, and any health hazards raised by such disturbances or other impacts including issues such as drinking water turbidity, clarity and aroma.
- k. Applications for Large-Scale Water Extraction Operations (but not Small-Scale Water Extraction Operations) must include a written engineering report, prepared by a licensed engineer from a list of MDOT engineers, with experience in traffic engineering. The report must include the following information:
- i. A map of the proposed nearest practical route from the water extraction sites to a state highway over public or private roads. If the applicant proposes or intends to utilize a route other than the nearest practical route to transport extracted water from the site to processing or distribution centers, the written report must also include a map identifying all public or private roads located within the Town and proposed to be so used. The map shall include population density, sites of historic significance, public buildings, schools and businesses.
 - ii. A traffic impact analysis, which shall indicate the expected average daily vehicular trips, peak-hour volumes, access conditions at the site, distribution of traffic, vehicle characteristics of vehicles to be used to transport extracted water, effect upon the level of service of the roadways giving access to the site and neighboring streets which may be affected, and recommended improvements to maintain the desired level of service on all affected streets. Trip generation rates shall be based on the traffic volume, pattern, and frequency of travel reasonably necessary to transport the quantity of extracted water identified in Section. IV ("Administrative Procedures")-B ("Application Submissions") 2.h, above.
 - iii. An analysis of the current condition and suitability of all roads, culverts, and bridges located on the proposed transport route or routes identified in subparagraph i, above, and

specifications and costs estimates to bring any insufficient elements up to safe and serviceable condition for the proposed transport of extracted water from the Extraction sites, based on the proposed weight and size of vehicles and traffic volume, pattern, and frequency identified in subparagraph ii, above. The report must also analyze whether road, bridge and culvert widths are sufficient to allow two trucks proceeding in opposite directions to safely pass and lines of sight along the entire transport route or routes (especially at grades, curves and intersections). Extraction sites that will permit access from the property on which the Large-Scale Water Extraction Operation will be located directly onto a state highway are exempt from requirements of this paragraph; in such case, all required Maine Department of Transportation (MDOT) entrance permits identifying and approving all proposed access points must be submitted.

- iv. A noise impact analysis of sound pressure levels reasonably anticipated at the property boundary lines of the Large-Scale Water Extraction Operation and along the proposed transport route or routes identified in subparagraph i, above.
 - v. If the Extraction facilities associated with the proposed Large-Scale Water Extraction Operation will be served by pipes, pipelines, aqueducts, or similar water transport features on lots *other than* that upon which the extraction activities will take place, the applicant must provide maps identifying the precise location(s) of such features and an analysis as to how such features will be located, constructed, maintained, and repaired in a manner that will satisfy the standards of Section V ("Review Standards").D ("Additional Standards for Non-Road-Based Water Transport Features"). The Applicant must also provide evidence of right, title, and interest in these additional properties, by virtue of a deed, a lease, or an option to lease or purchase.
- i. Applications for Large-Scale Water Extraction Operations (but not Small-Scale Water Extraction Operations) must include a proposed monitoring and testing plan and system of recording and documenting water Extraction and recharge data within the Zone of Contribution and the Zone of Influence. To the extent possible, the monitoring and testing plan shall locate at least 25% or two (2), whichever is greater, of monitoring locations at or near private wells located within the Zone of Contribution and at least 10% or two (2), whichever is greater, at or near private wells located within the Zone of Influence that lies outside the Zone of Contribution, and shall include the following testing elements:
- i. Reports of rainfall and snowfall over the preceding five (5) months and the historic data in the same period for the prior five (5) years and a table showing the calculated limit of

pumping and the actual amount pumped for each point of Extraction, as well as the aggregate pumped at all Extraction points.

- ii. Water level measurements and water quality testing (performed by a Maine licensed testing laboratory), which shall be performed for all wells.
- iii. Information shall be gathered on the following water parameters:
 - Water level
 - Flow rate in the Aquifer
 - Turbidity
 - Transparency
 - Total phosphorus
 - Chlorophyll-a
 - Dissolved oxygen / Depth
 - Temperature / Depth
 - pH
 - Total organic carbon
 - Color
 - Pesticides / herbicides / chemical byproducts (e.g. Atrazine, Dioxin...)
 - VOCs (Volatile Organic Compounds) (e.g. MTBE, Toluene...)
 - Total Coliform / E. Coli
 - Phytoplankton / Zooplankton
 - Alkalinity
 - Conductivity
 - Aroma
 - Mercury, Arsenic, Lead, Iron, Sulfur, Manganese, Magnesium, Copper
 - Any other water parameters, as required by the Planning Board

The monitoring and testing plan shall include a requirement to report to the CEO (Code Enforcement Office) and a licensed hydrogeologist chosen by the Town (covered by escrow account as described below) on a monthly basis the information identified in subparagraphs i-iii, above.

- m. A storm water management plan.
- n. An erosion and sedimentation control plan.
- o. An engineered subsurface wastewater disposal plan, including a plan for the disposal of Process Water.
- p. Application and escrow fees.
 - i. All applications for Large-Scale Water Extraction Operations shall be accompanied by a nonrefundable application fee, payable by check to the Town. All applications for Small-Scale

Water Extraction Operations shall be accompanied by a nonrefundable application fee, payable by check to the Town.

- ii. In addition, the application shall be accompanied by a fee of \$5,000 for Large Scale Operations or \$2,500 for Small Scale Operation, which shall be deposited by the Town in an escrow account designated for that Large-Scale Water Extraction Operation application or Small-Scale Water Extraction Operation (the "Escrow Fee"). The Escrow Fee shall be used by the Town to pay for all expenses reasonably related to: (a) the Planning Board's review of the Large-Scale Water Extraction Operation application or Small-Scale Water Extraction application, including without limitation publishing notices of public hearings and hiring independent consulting services to peer-review hydrogeologic or engineering reports and other technical submissions associated with the application and to ensure compliance with this Ordinance, and (b) if the application is approved, the inspection of the Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation, review of records, and other administrative requirements pursuant to Section VI. ("Technical and Professional Services") If the balance in the escrow account is drawn down by 75%, the Town shall notify the applicant and require that the balance is brought back up to the original deposit amount within thirty (30) days of written notice or the process will cease. The Town shall continue to notify the applicant and require a deposit as necessary whenever the balance of the escrow account is drawn down by 75% of the original deposit. Any balance in the escrow account remaining after a decision on the Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation application by the Planning Board shall be returned to the applicant, except for an amount reasonably calculated by the CEO as necessary to cover the on-going costs of the inspection, administrative review, and other requirements set forth in Section VII. ("Technical and Professional Services") if the application is approved. This continuation of the escrow account shall be replenished to the amount calculated by the CEO within thirty (30) days of written notice that the balance has dropped below 75% of the predetermined amount.
- iii. If approved, a surety bond covering the costs of restoration, of all concerned properties to as near as possible to the original state or a state compatible with the surrounding environs, will be provided to the Town. The value of this bond will be reviewed every five (5) years to ensure the costs involved in the approved plan are covered.
- iv. If the applicant submits an amendment to the applicant's original proposed Large-Scale Water Extraction Operation at any time prior to the Planning Board's issuance of a decision on

the application, the amendment application materials shall be accompanied by a nonrefundable amendment application fee, payable by check to the Town.

- v. If the applicant submits an amendment to its proposal after the Planning Board's issuance of a decision on the originally submitted Large-Scale Water Extraction Operation application, the amendment application shall be treated as a new application.
- q. The Planning Board may require any additional information not listed above at any time upon a determination by the Planning Board that such additional information is necessary to determine whether the requirements of this Ordinance have been met.

D. Notice of Application Submission. Concurrent with the filing of the application to the Planning Board, the applicant shall: (1) notify in writing by Certified, Return receipt request Mail all owners of property located within 1,500 feet of any property line (within the Town of Brownfield) of the site of the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation and specifying the location of the proposed Operation; (2) notify in writing by First Class mail to all owners of property between 1,501 and 3,000 feet of any property line (within the Town of Brownfield) of the site of the proposed Large-Scale Water Extraction Operation or Small-Scale Operation and specifying the location of the proposed Large-Scale Water Extraction Operation or Small-Scale Operation; (3) notify the municipal clerk of any neighboring municipalities if any portion of the Large-Scale Water Extraction Operation abuts or crosses municipal boundaries. The applicant shall provide evidence of such notices to the Planning Board.

E. Completeness of Review. Within sixty (60) days of the receipt of the application, the Planning Board shall determine whether the application is complete. An application shall be considered complete upon submission of the required application and escrow fees and all information required by this Ordinance. The Board shall issue a written statement to the applicant upon its determination that an application is complete. If the application is not complete, the Planning Board shall notify the applicant of the specific additional materials necessary to deem the application complete and shall set date by which the additional materials must be submitted. If the additional materials are not submitted by that date, the application shall be returned to the applicant as incomplete.

F. Public Hearing. The Planning Board shall hold a public hearing in accordance with the Planning Board By-Laws. A Public Hearing shall be held within forty-five (45) days of determining that an application is complete. Notice of the hearing shall be provided as follows:

- 1. By the applicant: In writing, at least fourteen (14) days prior to the hearing: (1) by Certified, Return receipt request Mail all owners of property located within 1,500 feet of any property line (within the Town of Brownfield) of the site of the proposed Large-Scale Water Extraction

Operation or Small-Scale Water Extraction Operation and specifying the location of the proposed Extraction Operation; (2) notify in writing by First Class mail to all owners of property between 1,501 and 3,000 feet of any property line (within the Town of Brownfield) of the site of the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation and specifying the location of the proposed Extraction Operation; (3) Notice shall also be given by certified mail to the municipal clerk of (a) any municipality located within 3,000 feet of the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation, and (b) any neighboring municipalities if any portion of the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation or any portion of any Aquifer or recharge area from which water is proposed to be extracted abuts or crosses a Town boundary. The notice shall include: the name of the applicant, a brief description of the proposal, and a plot plan identifying the proposed location of the Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation and the site layout in relation to nearby roads and properties. The applicant shall present a copy of the notice and proof of notification to the Town.

2. By the Town: By publishing a notice of the date, time, and place of the public hearing in newspapers of general circulation within the Town and its environs, and in a conspicuous public place at least fourteen (14) days prior to the hearing.

All costs incurred by the Town in providing the notices required herein shall be borne by the applicant out of the escrow fee.

The Planning Board shall conduct the Public Hearing according to its By-Laws and as necessary may adopt procedural rules for the hearing that it deems appropriate, fair, and reasonably calculated to provide full consideration of the issues pertaining to its review of the application, including the imposition of reasonable time limits for presentations by the applicant, any opponents, experts, and members of the public.

- G. Decision.** The Planning Board shall, after a public hearing and review of the application, issue written findings of fact and conclusions of law that outline the reasons it approves, approves with conditions, or denies the application, based on the standards set forth in this Ordinance. The Planning Board may impose conditions in any permit issued hereunder to ensure conformity with the purposes and requirements of this Ordinance. Any approval (conditional or unconditional) shall require the Planning Board's determination that the applicant has satisfied all of the review standards set forth in Section V ("Review Standards"), below. Any approval shall specify that the Use Permit authorizes a daily Extraction total not exceeding the maximum quantity as set forth in the application or this Ordinance, whichever is less.

SECTION V. REVIEW STANDARDS

The Planning Board shall not approve any Large-Scale Water Extraction Operation Use Permit under this Ordinance until it has affirmatively found that each of the following review standards has been satisfied. The burden of establishing and demonstrating compliance with these standards is solely the applicant's.

A. REVIEW STANDARDS of Large-Scale Water Extraction Operations

1. Technical and Financial Capacity; Performance Guarantee

- a. The applicant must demonstrate that it possesses the necessary technical expertise and financial capacity to construct, install, maintain, monitor, and repair the proposed Large-Scale Water Extraction Operation in compliance with all applicable Ordinance standards and conditions of approval.
- b. The Planning Board shall require that the applicant furnish a bond, letter of credit, or another performance guarantee that it deems of equivalent security, made payable to the Town, to secure the applicant's obligations under this Ordinance. The Performance guarantee must be reviewed every five years. If an increase in projected costs is greater than 20% of the existing bond, then the Town and the operator must negotiate a new bond to secure the applicant's obligations under this Ordinance.

2. Geological and Hydrologic Standards

In making findings under this Section IV. ("Administrative Procedures")-B ("Application Submissions"), the Planning Board shall consider both the direct effects of the proposed Large-Scale Water Extraction Operation and its effects in combination with existing and reasonably anticipated water Extractions from the water sources proposed to serve the Large-Scale Water Extraction Operation.

- a. The Large-Scale Water Extraction Operation shall not have an undue adverse effect on existing uses and users of Groundwater resources or surface water resources.
- b. The Large-Scale Water Extraction Operation shall not have an undue adverse effect on the quantity or quality of drinking water supplies within the Town.
- c. The Large-Scale Water Extraction Operation shall not have an undue adverse effect on Groundwater flow patterns, or hydrogeologic connections relating to the affected Aquifer, its recharge areas, or other Groundwater sources within or outside the Town.
- d. The Large-Scale Water Extraction Operation shall not substantially impact, diminish, or alter the quantity or quality of surface waters within the Town, including during any periods of drought. In making this finding, the Planning Board shall evaluate, at minimum, whether the Large-Scale Water Extraction Operation is likely to reduce water levels and stream flow below historical levels, reduce the oxygen concentration profile, increase the temperature profile, or increase turbidity.

- e. The Large-Scale Water Extraction Operation shall not cause erosion or sedimentation in the Zone of Influence or Zone of Contribution.
- f. The Large-Scale Water Extraction Operation shall not cause any ground subsidence within the boundary lines of the property or properties associated with the Large-Scale Water Extraction Operation.
- g. The Large-Scale Water Extraction Operation shall not adversely affect the long-term water storage capacity of the Aquifer or its recharge areas, or other Groundwater sources, including during periods of drought. A finding by the Planning Board that the Large-Scale Water Extraction Operation is likely to cause a reduction in Groundwater level by more than three inches below the mean monthly level (as determined by the Groundwater level measured in test wells prior to the commencement of any Large-Scale Water Extraction Operation) shall be sufficient for the Planning Board to find that this standard is not met.
- h. The quantity of water to be extracted shall not cause an undue adverse effect on the quantity of Groundwater available to existing and reasonably anticipated water Extraction operations and drinking water supplies.
- i. The Large-Scale Water Extraction Operation shall not substantially lower the Groundwater table or change Groundwater flow patterns, as based on the conditions of a drought with a probability of occurrence of once in ten years.
- j. The Large-Scale Water Extraction Operation shall not have undue adverse effect or create a health risk to humans or animals, wild or domestic, nor cause significant changes in the quantity and quality of drinking water obtained from water sources in the Zone of Contribution or the Zone of Influence, considering without limitation the water parameters set forth in Section IV-("Administrative Procedures")B "Application Submission"-2-I-iii.
- k. Extraction sources associated with the Large-Scale Water Extraction Operation shall not be located within 1.5 miles of any public drinking water supply.
- l. Extraction sources associated with the Large-Scale Water Extraction Operation shall not be located within the Aquifer recharge area of any public water supply.
- m. The Large-Scale Water Extraction Operation shall not cause Process Water or Wastewater to be sprayed onto the surface of the ground or any surface waters. The Large-Scale Water Extraction Operation shall treat and dispose of all Process Water and Wastewater in a manner that does not adversely affect the quality of surface waters or Groundwater or otherwise pollute the environment.
- n. The applicant's proposed monitoring and testing plan and system of recording and documenting water Extraction and recharge data complies with the requirements of Section IV-("Administrative Procedures")B "Application Submission"-2-I-iii and provides for the collection and submission to the CEO, and/or a licensed hydrogeologist of the Town's choosing, of a sufficient quantity and quality of information about the Large-Scale Water Extraction

Operation and affected Aquifer and recharge area to determine whether the Large-Scale Water Extraction Operation meets the geological and hydrologic standards set forth in this Ordinance.

3. Community Impact Standards

- a. Adequate provision should be made to ensure that the Large-Scale Water Extraction Operation shall not result in unreasonable storm water runoff, erosion, or sedimentation.
- b. Adequate provision shall be made for safe and convenient vehicular access to the Large-Scale Water Extraction Operation and for traffic circulation, loading, and unloading upon the property so as to safeguard against hazards to motorized and pedestrian traffic on adjacent roads, avoid traffic congestion and traffic safety hazards, and avoid all other safety risks.
- c. Any driveways or access roads serving the Large-Scale Water Extraction Operation shall be designed to satisfy all applicable Maine Department of Transportation driveway and entrance rules, as well as all applicable local road and driveway standards. All such access roads shall be maintained for year-round access in keeping with MDOT Standards by the applicant unless and until the operation is deemed Discontinued. The applicant shall have a period of no longer than six (6) months from the date of Deemed Discontinuance to restore the property to its original condition, unless the Planning Board and the Board of Selectmen agreed to other conditions.
- d. Any vehicular demand on existing Town roads, public rights-of-way, or public easements occasioned by the Large-Scale Water Extraction Operation and associated transport of water to and from storage, transfer, and distribution facilities shall not exceed the capacity of those roads, or cause the premature failure, aging, or diminished utility of those roads. The opinion of the Town's Director of Public Works shall be solicited in this regard.
- e. The Large-Scale Water Extraction Operation and activities incidental thereto shall not cause an undue adverse impact on adjacent properties, nearby communities, or the Town as a whole. In making findings concerning this standard, the Planning Board shall evaluate any increased traffic volume, frequency, and type on public roads attributable to construction, installation, and operation of the Large-Scale Water Extraction Operation; noise and vibration emitted by the Large-Scale Water Extraction Operation; or glare from lights or other nuisance conditions arising from the Large-Scale Water Extraction Operation. Prior to any action beyond the site plan review the Town will employ licensed traffic engineer (costs to be covered from the escrow account funded by the applicant) to assess existing levels of traffic and potential nuisance conditions that may arise. Future testing if needed may be requested by the Code Enforcement Office and to be done by a licensed traffic engineer (costs to be covered from the escrow account funded by the applicant)

- f. The Large-Scale Water Extraction Operation and the activities incidental thereto shall not increase noise levels to the extent that abutting or nearby properties are adversely affected. In order to comply with these standards, the Large-Scale Water Extraction Operation must meet the following requirements: Prior to any action beyond the site plan review the Town will employ a licensed sound engineer [costs to be covered from the escrow account funded by the applicant] to assess existing noise levels. If the application is approved the Town shall hire a licensed sound engineer (costs to be covered from the escrow account funded by the applicant) who shall test the site and provide a report as requested by the Code Enforcement Office.
- g. Except as provided in Section V.("Review Standards") §C-("Community Impact Standards")-F.c, below, the maximum permissible sound level of any continuous, regular, frequent, or intermitted source of sound produced by any activity related to the Large-Scale Water Extraction Operation shall not exceed the following limits:

A. 7:00 AM – 7:00 PM	B. 7:00 PM – 7:00 AM
C. 55 dBA	D. 45 dBA

- i. Sound levels shall be measured four (4) feet above the ground at the property line of the Large-Scale Water Extraction Operation by a meter set on the A-weighted response scale, fast response. The meter shall meet the latest version of the American National Standards Institute (ANSI) "American Standard Specification for General Purpose Sound Level Meters" and shall have been calibrated at a recognized laboratory within the past year.
- ii. When a proposed Large-Scale Water Extraction Operation is to be located in an area where the daytime pre-Operation ambient hourly sound level (equivalent sound level Leq 60) is equal to or less than 45 dBA or the nighttime pre-development ambient hourly sound level is equal to or less than 35 dBA, the hourly sound level resulting from the Large-Scale Water Extraction Operation and the activities incidental thereto shall not cause the ambient hourly sound levels at the property lines of the Large-Scale Water Extraction Operation to be 5 dBA more than the ambient hourly sound level prior to the Large-Scale Water Extraction Operation.
- iii. The following activities are exempt from the requirements of Section V.(" Review Standards") § C.("Community Impact Standards")6.a, b, and c: (i) noises created by construction activities between 7:00 AM and 7:00 PM and (ii) noises of safety signals, warning devices, and emergency pressure relief valves and other emergency activities.

- iv. For purposes of this Section V. ("Review Standards") § C. ("Community Impact Standards").6, the following terms shall have the following meaning:
 - a. "Ambient sound" means at a specified time, the all-encompassing sound associated with a given environment, being usually a composite of sounds from many sources at many directions, near and far, including the Large-Scale Water Extraction Operation and the activities incidental thereto.
 - b. "Equivalent sound level" or "Leq 60" means the equivalent constant sound level to that emitted by the varying sound over one hour and, specifically, the level of the mean-square A-weighted sound pressure measured over one hour.
- h. Hours of operation may not be before 7:00 AM or after 7:00 PM; however, the Planning Board may impose additional restrictions on hours of operation, including on truck traffic on public roadways. "Hours of operation" refers to hours when water Extraction-related activities are occurring at the facility and hours when truck traffic associated with the Large-Scale Water Extraction Operation is allowed on public roads within the Town.
- i. All water Extraction meters, used to measure the gallons of water removed from the site, must be calibrated, certified, and sealed annually by the Maine State Department of Weights and Measures with all costs to be borne by the applicant or the extractor, and evidence of the same provided to the Town.

4. Additional Standards for Non-Road-Based Water Transport Features

- a. If the Extraction facilities associated with the proposed Large-Scale Water Extraction Operation will be served in whole or in part by pipes, pipelines, aqueducts, or similar water transport features, such features shall be located, constructed, maintained, and repaired in a manner that shall not (i) interrupt the use of existing public roadways, rights-of-way, and easements; (ii) interrupt access to any public parks, great ponds, or any other land or water to which the public has a right of access; (iii) pose a risk of damage to property along or through which such water transport features traverse as a result of construction, maintenance, general operation, or reasonably foreseeable failure or malfunction resulting in ponding, erosion, runoff or similar adverse effects; or (iv) result in any cost to the Town or any private property owner.
- b. The applicant shall provide a plan to remove all pipes, pipelines, aqueducts or similar water transport features and their supporting infrastructure. The plan shall include a plan to restore all properties, either owned or controlled by the applicant or by the Town, to as near natural or original conditions whichever is approved by the Planning Board and the Board of Selectmen. This restoration must be carried out within six (6) months of the date of Deemed Discontinuance. Expenses to be covered by a Surety Bond established at the time of granting the Use Permit by the Town.

5. Additional Standards for Bulk Water Transport

Any proposed Large-Scale Water Extraction Operation that proposes or is likely to cause the transport of water in excess of 100 gallons per day on public roadways within the Town must meet the following additional standards:

- a. The applicant must submit to the Planning Board a copy of any related applications filed with, or permits received from any state agency pursuant to the provisions of 22 M.R.S § 2660-A, the Bulk Water Transport Rules of the Department of Health & Human Services, or any other application contemporaneous with its filing with the state and a copy of any state agency decisions pertaining thereto.
- b. The applicant shall identify the types of tanker trucks or other vehicles to be used for bulk water transport, and shall demonstrate that the vehicles to be used comply with all state and federal weight limit and labeling requirements.
- c. The applicant shall demonstrate that the proposed transport of extracted water shall not constitute a threat to public health, safety, or welfare.

B. Review Standards of Small-Scale Water Extraction Operations

1. The quantity of water to be taken may not substantially lower the ground water table beyond the property lines, cause salt water intrusion, cause undesirable changes in ground water flow patterns, or cause unacceptable ground subsidence based on drought with a probability of 1 in 10 years. One test well is required for each Small-Scale Water Extraction Operation.
2. The facility may not cause water pollution or other diminution of the quality of the Aquifer from which water is to be extracted.
3. The facility may not have unsafe and unhealthy conditions within and about the site.
4. The use must not cause sedimentation or erosion.
5. The facility, if located within the defined recharge area of a public water supply, must not adversely affect that water supply. (The Planning Board must consider all information provided by the operation of the public water supply before reaching a finding of fact.)
6. Operation records must be kept that show daily, monthly and yearly totals of water extracted, and the amount stored and shipped for each interval.
7. If the Applicant has documentation from an agency of the State government that has jurisdiction over any aspect of operations, these documents, or permits, must be provided to the Code Enforcement Office prior to commencement of operations.
8. Adequate provision shall be made for safe and convenient vehicular access to the Small-Scale Water Extraction Operation and for traffic circulation, loading, and unloading upon the property so as to safeguard against hazards to motorized and pedestrian traffic on adjacent roads, avoid traffic congestion and traffic safety hazards, and avoid all other safety risks.
9. Any vehicular demand on existing Town roads, public rights-of-way, or public easements occasioned by the Small-Scale Water Extraction Operation and associated transport of water to and from storage, transfer, and distribution facilities shall not exceed the capacity of those roads, or cause the premature

failure, aging, or diminished utility of those roads. The opinion of the Town's Director of Public Works shall be solicited in this regard.

10. All water Extraction meters, used to measure the gallons of water removed from the site, must be calibrated, certified, and sealed annually by the Maine State Department of Weights and Measures with all costs to be borne by the applicant or the extractor, and evidence of the same provided to the Town.
11. The Small-Scale Water Extraction Operation shall not cause Process Water or Wastewater to be sprayed onto the surface of the ground or any surface waters. The Small-Scale Water Extraction Operation shall treat and dispose of all Process Water and Wastewater in a manner that does not adversely affect the quality of surface waters or Groundwater or otherwise pollute the environment.
12. If the Extraction facilities associated with the proposed Small-Scale Water Extraction Operation will be served by pipes, pipelines, aqueducts, or similar water transport features on lots *other than* that upon which the extraction activities will take place, the applicant must provide maps identifying the precise location(s) of such features and an analysis as to how such features will be located, constructed, maintained, and repaired in a manner that will satisfy the standards of Section V ("Review Standards").D ("Additional Standards for Non-Road-Based Water Transport Features"). The Applicant must also provide evidence of right, title, and interest in these additional properties, by virtue of a deed, a lease, or an option to lease or purchase.

SECTION VI. TECHNICAL AND PROFESSIONAL SERVICES

The Planning Board shall retain a technical evaluation of the hydrogeologic and traffic impacts of the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation conducted by one or more qualified, independent firms or consultants. The Planning Board may also retain any other independent technical and professional services reasonably necessary to assist in its review of the proposal. Services may include without limitation: legal services, a technical analysis of shared use of an Aquifer, a technical analysis of the effects of Extraction on other users or properties within the Town, a visual impact analysis, a traffic impact analysis, a noise impact analysis, an analysis of any applicable federal and state requirements, an analysis of alternative sites, and other issues relevant to the requirements set forth in this Ordinance. The costs of all such technical and professional services shall be borne by the applicant out of the escrow fee. "Independent firm or consultant" means a firm or consultant free from outside control by the applicant and having no financial, fiduciary, or other relationship with or obligation to the applicant that undermines, or has the appearance of undermining, the impartiality of the firm or consultant when evaluating or rendering an opinion regarding the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation.

SECTION VII. PERMIT RENEWAL

A Use Permit may be renewed for a one-year period by the Planning Board if, after notice, completeness review, and hearing pursuant to Section V ("Review Standards"), above, the Planning Board finds the following:

- A. There is no proposed increase in the permit holder's Extraction activities in terms of the quantity of water to be extracted;
- B. There is no change in the location or configuration of the Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation;
- C. There has been no material failure by the permit holder to comply with any conditions of the Use Permit;
- D. There has been no material failure by the permit holder to meet the review standards applicable to the Use Permit; and
- E. There is no credible evidence that the permit holder's continuing operation would not continue to meet the applicable review standards and permit conditions during the renewal period.

The application for a Use Permit Renewal must be filed with the Planning Board not less than ninety (90) days prior to the expiration of the existing permit and must include evidence supporting the criteria set forth in subparagraphs A – E, above, along with a Renewal Application Fee payable to the Town.

For purposes of assisting the Planning Board in making findings regarding the criteria set forth in subparagraphs A – E, the CEO (Code Enforcement Office), or a licensed hydrogeologist of the Town's choosing, shall inspect, or arrange for an independent firm or consultant, as defined in Section V. ("Review Standards"), to inspect the Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operations and all records on a semi-annual (every six months) basis and shall prepare, or arrange for an independent firm or consultant as defined in Section VI. ("Technical and Professional Services") to prepare, an annual report for the Planning Board setting forth all material facts related thereto.

The CEO and the Planning Board may retain technical and professional services to assist in the renewal application review and inspections, which costs shall be borne by the applicant. The CEO or the Planning Board may require the applicant to submit and may utilize an escrow fee as provided in Section IV-("Administrative Procedures")B "Application Submission"-2 p-("Application and escrow fees") to pay for any expenses reasonably related to the renewal application review and CEO inspections and reporting requirements.

SECTION VIII. PERMITS NOT TRANSFERABLE

Permits granted to an applicant pursuant to the provisions of this Ordinance are granted solely to that applicant. Such permits may not be sold, leased, subcontracted, or otherwise transferred to any other party. Any such transfer shall render the permit immediately null and void and the continued operation of a Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation following

such an illegal transfer shall subject both the transferor and transferee to the penalties set forth in 30-A M.R.S.A. § 4452.

SECTION IX. BUILDING PERMITS FOR OBSERVATION WELLS

Any observation wells proposed to be installed to conduct Pumping Tests (a.k.a. Aquifer tests or Aquifer performance tests) to estimate hydraulic properties of an Aquifer system in anticipation of a proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation shall require a written Building Permit issued by the CEO, subject to the following requirements:

- A. Application submission. An application must be submitted to the CEO, which contains (1) evidence of right, title, or interest; (2) a map identifying the locations of all proposed wells; (3) a vegetation clearing plan; (4) an erosion and sedimentation control plan; (5) a description of the types of Pumping Tests proposed to be conducted; (6) a test plan that includes at minimum: (i) a description of the design of the test, (ii) methods of measuring and controlling flow rates, (iii) proposed pumping and testing schedules (including measurement frequency and identification of pre-test and post-test collection periods), (iv) proposed means of disposal of pumped water, and (v) test duration and time of year for pumping test; (7) an analysis of the effects of the proposed Pumping Tests on surrounding water users and landowners; and (8) an application fee payable to the Town.
- B. Notice of Receipt of Building Permit Application. Concurrent with the filing of the application, the applicant shall (1) notify in writing by Certified, Return receipt request Mail all owners of property located within 1,500 feet of any property line (within the Town of Brownfield) of the site of the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation and specifying the location of the proposed Water Extraction Operation; (2) notify in writing by First Class mail to all owners of property between 1,501 and 3,000 feet of any property line (within the Town of Brownfield) of the site of the proposed Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation and specifying the location of the proposed Water Extraction Operation; (3) notify the municipal clerk of any neighboring municipalities if any portion of the property on which the proposed observation wells are to be located and to whom the applicant holds right, title, or interest abuts or crosses a Town boundary. All costs incurred by the Town in providing the notice required herein shall be borne by the applicant out of the building permit application fee. If the building permit application fee is insufficient to cover such costs, the CEO may require that the applicant provide the required notice at the applicant's cost.
- C. Building Permit. No sooner than fourteen (14) days and no later than forty-five (45) days after the receipt of a complete building permit application, the CEO shall issue a building permit for the proposed observation wells if the applicant demonstrates that the proposal:
 - i. Shall avoid direct discharge of water on the ground surface or a surface water feature (such as a stream) such that it is likely to recharge the pumped Aquifer;

- ii. Shall avoid adverse thermal, biological, water quality, erosion and sedimentation impacts, including when discharging to Groundwater or surface water features; and
- iii. Shall have no undue adverse effect on surrounding water users and landowners.

SECTION X ENFORCEMENT

The following acts or omissions constitute a violation of this Ordinance:

- A. Construction, installation, or operation of observation wells or a Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation without first obtaining a permit as required hereunder;
- B. Operation of observation wells or a Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation not in compliance with the standards set forth hereunder or the terms and conditions set forth in any permit issued hereunder;
- C. Any material misstatement of fact in any application or supporting documentation discovered subsequent to the issuance of any permit hereunder;
- D. Any failure to comply with and maintain the standards set forth hereunder including, without limitation, exceeding maximum traffic volumes or operating outside of approved hours of operation; or
- E. Any failure to observe and comply with any provision of this Ordinance.

A drop in Groundwater level at monitored locations more than three (3) inches below the mean monthly level (as determined by the Groundwater level measured in test wells prior to the commencement of any Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation) shall be cause for the Town, through its CEO, to demand that the Large-Scale Water Extraction Operation or Small-Scale Water Extraction Operation, including all water Extraction, cease and desist immediately until the Groundwater level returns to two (2) inches below the original mean monthly level as defined herein.

This Ordinance shall be enforced by the municipal officers of the Town of Brownfield or their duly authorized designees.

SECTION XI. APPEALS

- A. Any person or entity aggrieved by a decision, action, or failure or refusal to take action of the CEO or the Planning Board may appeal to the Brownfield Board of Appeals within 30 days of the decision, action, or failure or refusal to take action complained of, by filing an appeal at the office of the Town Clerk on forms approved by the Board of Appeals.
- B. All appeal applications shall be accompanied by a nonrefundable appeal application fee, payable to the Town. In addition, the appeal application shall be accompanied by an escrow fee of \$1,000, which shall be deposited by the Town in an escrow account designated for that appeal application and which

shall be used by the Town to pay for all expenses reasonably related to the Board of Appeals' review of the application, including without limitation publishing notices of public hearings and hiring independent licensed professionals and consulting services to review hydrogeologic or engineering reports and other technical submissions associated with the application and to ensure compliance with this Ordinance. If the balance in the escrow account is drawn down by 75%, the Town shall notify the appellant and require that the balance be brought back up to the original deposit amount. The Town shall continue to notify the appellant and require a deposit as necessary whenever the balance of the escrow account is drawn down by 75% of the original deposit. Any balance in the escrow account remaining after a decision on appeal application by the Board of Appeals shall be returned to the appellant.

- C. Appeals from decisions of the CEO and decisions of the Planning Board shall be purely appellate. The CEO shall transmit to the Board of Appeals the decision of the Planning Board and all documents and other evidence comprising the record on which the Planning Board decision was based. The Board of Appeals shall conduct a public proceeding at which all persons shall have the right to present legal argument concerning the decision of the Planning Board. The Board of Appeals shall not permit the introduction of additional testamentary or documentary evidence. The standard of review shall be whether the decision of the CEO or the Planning Board was arbitrary or capricious, based on error of law, or based on findings of fact not supported by substantial evidence in the record. The Board of Appeals shall have authority to sustain or reverse a decision of the CEO or Planning Board or to remand the matter to the CEO or Planning Board for further proceedings.
- D. The affirmative vote of three members of the Board of Appeals shall be necessary to grant an approval or permit on appeal from a decision of the CEO or to grant an appeal from a decision of the Planning Board. The failure of the Board of Appeals to issue a written notice of its decision, directed to the appellant by registered mail, within 60 days of the submission of a complete appeal application shall constitute a denial of the appeal.
- E. Any aggrieved party may appeal a decision of the Board of Appeals to Maine Superior Court within 45 days of the date of the vote of the Board of Appeals in accordance with 30-A M.R.S. § 2691 and Rule 80B of the Maine Rules of Civil Procedure.

SECTION XII. SEPARABILITY

If any section, part of a section, or any provision of this ordinance is declared by a court of competent jurisdiction to be unconstitutional, invalid, or unenforceable, such declaration shall not affect the validity or enforceability of the Ordinance as a whole, or any part of provision other than that specifically declared to be unconstitutional, invalid, or unenforceable.

SECTION XIII. EFFECTIVE DATE, RETROACTIVITY

This Ordinance shall take effect as of the date of its approval by the voters of the Town of Brownfield at a town meeting or referendum (the "Effective Date"). Notwithstanding the provisions of 1 M.R.S.A. § 302, and regardless of the date on which it is approved by the voters of the Town, this Ordinance shall be applicable retroactively as of September 15, 2017 (the "Date of Applicability") and shall govern any and all pending proceedings on or at any time after the Date of Applicability.

SECTION XIV. AMENDMENT

This Ordinance may be amended by a vote of a Town Meeting, upon a Town Meeting warrant article submitted by the Selectmen after a public hearing.

SECTION XV. PENALTIES

Any person, firm, or corporation but not limited to a landowner, his or her agent or lessee, or a contractor acting on behalf of a landowner, or his or her agent or lessee, who or which orders or conducts any activity in violations of the provisions of this ordinance shall be penalized as set forth in 30-A M.R.S.A. § 4452.

SECTION XVI. DEFINITIONS

Aquifer: A geologic formation of permeable rock, gravel, or sand containing or conduction Groundwater that supplies or has the potential to supply drinking water or is a source of water for surface waters including Springs.

Cone of Depression: The pattern of water table distortion that occurs in an Aquifer when Groundwater is pumped from a well.

Discontinue/Discontinuance/Deemed Discontinuance: The cessation of a Large-Scale Extraction Operation, accompanied by an express statement by the licensed operator indicating said operator's intent to not resume extraction, or the passage of 365 days without any Large-Scale Extraction activities, whichever occurs sooner. The date upon which an operation is "Deemed Discontinued" shall either be the date upon which the Town receives an express communication from the operator that all Large-Scale Extraction Operations have ceased, or the 366th day following the suspension of Large-Scale Extraction Operations. The Discontinuance of a Large-Scale Extraction Operation shall require the returning of the affected area, including but not limited to the extraction site, to its original, undisturbed condition, as more specifically laid out in this Ordinance.

Extraction: The withdrawal, removal, diversion, taking, or collection by any means of water from Groundwater sources, Aquifers, Springs, wells, pumps, or similar features.

Groundwater: The water beneath the surface of the ground.

Large-Scale Water Extraction Operation: The Extraction for commercial sale or donation, by any entity, person, consortium, or association of entities or persons acting in concert, of more than ten thousand (10,000) gallons per day up to an aggregate maximum of twenty thousand (20,000) gallons per day of Groundwater,

Spring water, surface water, or water from any Aquifer or its recharge area, regardless of the number of Extraction sources or facilities used.

Non-Commercial Water Extraction Operation: The Extraction of Groundwater, Spring water, surface water, or water from any Aquifer or its recharge area (i) for non-commercial use (including without limitation for public water supplies and fire suppression) or (ii) exclusively associated with and necessary for agricultural uses, whether commercial or not. Non-Commercial Water Extraction Operations are not subject to the requirements of this Ordinance.

Process Water: Any water associated with a Large-Scale Water Extraction Operation that is not intended to be bottled.

Pumping Tests: A method to test a well in order to determine aquifer characteristics, source interference, safe yield, Zone of Influence, and other Aquifer parameters.

Small-Scale Water Extraction Operation: The Extraction for commercial sale or donation, by any entity, person, consortium, or association of entities or persons acting in concert, of more than two thousand (2,000.00) gallons per day up to an aggregate maximum of nine thousand nine hundred and ninety-nine (9,999.00) gallons per day of Groundwater, Spring water, Surface Water, or water from any Aquifer or its recharge area, regardless of the number of Extraction sources or facilities used. All other commercial and or/non-commercial operations carried on completely within the borders of the Town and whose products are not transported for sale outside of the borders of the Town are exempted from this ordinance.

Spring: A location, whether developed (e.g. by a spring box or tile) or undeveloped, where groundwater flows naturally to the surface of the earth. For the purpose of this Ordinance, a developed spring is considered a well when groundwater is withdrawn from the source at a rate greater than its overflow discharge.

Storativity (or storage coefficient): The volume of water released from storage per unit decline in hydraulic head in the aquifer, per unit area of the aquifer.

Surface Water: All rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs and all bodies of surface water, artificial or natural, that are contained within, flow through or border upon the Town.

Transmissivity (or transmissibility): A property closely related to hydraulic conductivity that describes the capacity of a specific water-bearing unit of a given thickness, such as an **Aquifer**, to transmit water.

Wastewater: Any domestic wastewater, or other wastewater from commercial, industrial, or residential sources, produced by ordinary living uses, including liquid waste containing animal or vegetable matter in suspension or solution, or the water-carried waste from the discharge of water closets, laundry tubs, washing machines, sinks, dishwashers, or other source of water-carried wastes of human origin.

Well: Any hole drilled, driven, bored, excavated, or created by similar method into the earth to locate, monitor, extract, or recharge groundwater. This term does not include springs.

Zone of Contribution: The geographic area supplying groundwater to a point or points of groundwater withdrawal, groundwater discharge to the land surface, groundwater discharge to a wetland, or groundwater discharge directly to surface water.

Zone of Influence: The geographic area where piezometric surface of the groundwater is lowered due to the influence of a groundwater withdrawal. Impacts to surface water elevation are included in influence. This Zone of Influence can have dimensions of a mile or more, depending on the characteristics of the Aquifer.

