AGENDA
CUMBERLAND TOWN COUNCIL MEETING
Cumberland Town Hall
Monday, October 8, 2007

6:00 p.m. – WORKSHOP
To meet with Hockey Building Committee re: future building site and update.

7:00 p.m. – CALL TO ORDER

I. APPROVAL OF MINUTES
   September 24, 2007

II. MANAGER’S REPORT

III. PUBLIC DISCUSSION

IV. LEGISLATION AND POLICY

07 – 125. To set a Public Hearing date (October 22nd) for consideration of speed limit reduction request to MDOT for Greely Road (45 to 35 mph).

07 – 126. To hear a report from Route 100 Committee re: zoning use and map changes; design standards and related subdivision ordinance amendments, and to confirm the October 22nd Public Hearing date.

07 – 127. To hear a report and set a Public Hearing date (October 22nd) for consideration of junkyard/recycler permit renewal, Greenlaw Salvage located at 1 Longwood Rd.

07 – 128. To set a Public Hearing date (October 22nd) for Cumberland Salvage junkyard/recycler permit renewal.

07 – 129. To set a date (October 22nd) to hear quarterly report from Town Council Finance Committee.
07 – 130. To hold a Public Hearing and authorize Town Manager to execute a Conservation Easement for Wetland Preservation at Twin Brook.

07 – 131. To authorize Town Manager to accept bid proposals for a maintenance building, shelter and athletic field improvements at Twin Brook.

07 – 132. To hear a report from Town Manager and set a Public Hearing date (November 12th and/or 26th) re: changes to sewer ordinance (ready to serve fees and connection fees).

07 – 133. To authorize a permit to MDOT for overweight trucks for 2008 Route 100 culvert project.

V. NEW BUSINESS

VI. EXECUTIVE SESSION – Pursuant to 1 M.R.S.A., § 405 (6) (A) re: personnel matter.

VII. ADJOURNMENT
MINUTES
CUMBERLAND TOWN COUNCIL MEETING
Cumberland Town Hall
Monday, September 24, 2007
6:00 p.m. – WORKSHOP
7:00 p.m. – CALL TO ORDER

WORKSHOP – Sewer Program Administration and Fees

Present: Chairman Porter, Councilors Copp, Storey-King, Perfetti, Turner, and Moriarty
Excused: Councilor Stiles.

I. APPROVAL OF MINUTES

September 10, 2007
Motion by Councilor Moriarty, seconded by Councilor Perfetti, to accept the minutes as printed, with changes.
VOTE: UNANIMOUS PASSAGE 5-0-1 (Councilor Turner abstained)

September 17, 2007
Motion by Councilor Storey-King, seconded by Councilor Copp, to accept the minutes as printed.
VOTE: UNANIMOUS PASSAGE 6-0

II. MANAGER’S REPORT

a.) Police grant for security system at High School:
Chief Charron addressed this item later in the evening.
b.) Acceptance of gift of historical maps:
Mr. Dave Bouffard, Boundary Points Survey has donated maps he discovered at the Registry of Deeds. The Manager explained the maps, which were on display during the meeting, dated back to 1727, and showed the boundaries of North Yarmouth and Falmouth. Both maps referenced the “white rock” which “served as a starting point of the northern boundary of Massachusetts” until 1668. The donated maps will be housed at Cumberland’s Prince Memorial Library.
c) Mailboxes on Blackstrap Road:
Manager has visited the site but has not yet been able to meet with the Post Master. The safety risk from the sheer numbers of mailboxes in one location “is absolutely amazing.”
d) Mary Dickenson-Wood:
Owner of property located at the corner of Tuttle Road and Main Street intends to plant over a thousand tulip bulbs on her property as a breast cancer awareness project. She intends to donate the flowers and will receive assistance from some members of local scout troops.

III. PUBLIC DISCUSSION

None
IV. LEGISLATION AND POLICY

07 – 119 To hear an update from the Code Enforcement Officer re: Cumberland Salvage and Greenlaw Salvage junkyard/recycler permits.

Code Enforcement Officer, William Longley, explained the junkyard/recycler permits are considered each year at this time. Cumberland Salvage and Greenlaw Salvage are the only two license holders in town. With respect to the Cumberland Salvage permit, Mr. Longley stated he “found it to be a very neat, very professional, very viable type business. I have had no complaints about the operation.” He added that this location has added a berm at the rear of its property where a recent subdivision has been created.

With respect to Greenlaw Salvage; however, the Code Enforcement Officer described it as “kind of an apples and orange comparison.” He provided the council with photos showing debris which he believes has been on site “for many, many years. I don’t see a lot of new stuff that’s come on site. The state wants “junk to come in; junk to go out.”” He expressed uncertainty as to the frequency in which material is rotated off the lot. He has spoken with Mr. Greenlaw regarding his need to provide documentation of business “viability.” He further explained that there are animals, including chickens and a goat, on the property, about which he has received at least one noise complaint.

Questions regarding the storage of mercury switches, fluids and batteries were posed. Mr. Longley indicated he had not inspected to determine whether any of these items have been removed. “The scope of my inspection is to report to you…to be your eyes and ears as to what’s out there.” Councilor Moriarty questioned whether there exists a residence in addition to the business. Mr. Longley believes there are residents; however, he does not believe Mr. Greenlaw resides at this residence. With respect to the animals, Mr. Longley explained the regulations require “some form of fencing” or “confined area” for the chickens. However, he noted upon his visit that the condition of the fence provides free range to the chickens. “The key issue” of viability is a concern for Councilor Moriarty. “I think you’ll wrestle with it again this year. It will be your determination…,” replied Mr. Longley. In response to the question regarding compelling records in response to the question of viability, Mr. Longley believes the town council may compel such records. “Your request should be to have an environmental impact study” in addition to the production of sales records. Chairman Porter express his belief that “nothing has changed” over last year. “Where can we hang our hat? Councilor Storey-King requested a log of all motor vehicles handled and dates the switches, batteries and fluids were removed. “I would really like to see that” before we move to consider permit renewal. Councilor Perfetti questioned whether the subject of viability is “discretionary” by the town council. It is, the Town Manager explained. However, receipts and tax records are acceptable documentation. When asked by Councilor Perfetti “what’s our remedy” if the license is not renewed, the Manager suggested it would “take a court injunction. The reality is if we don’t do something soon it’s going to be there forever.” Councilor Moriarty requested the council receive as much “objective input as possible” with relation to actual violations and potential concerns that may or may not rise to the level of violations. “I hope to hear back with as much depth of input as you can give us.”
Chairman Porter indicated he would not vote for a license renewal without an environmental impact study. “I’d be very interested to see where he is in the aquifer zone.” Councilor Turner concurred, noting, “substances migrate. We owe it to the public to make sure they’re not in jeopardy of having wells polluted.”

The Town Manager suggested his purpose this evening was informational only. “This gives us the opportunity to put the applicant on notice that we’ve got some concerns.” He proposed a meeting between he, the Code Enforcement Officer, and Mr. Greenlaw to address the list of concerns which include oil spills, building lumber, tires, maintenance of buffer, and logs. “If we can not have a positive response or mitigation plan…we will be recommending to table the license,” and seek legal remedies if needed.

No public input received.

07 – 120 To hear an update from the Police Dept. re: underage drug/alcohol use.

Police Chief Charron informed the council that the department’s underage alcohol use forum has been well received. The department has made repeated efforts to install security equipment at the high school over the past several years. “I think it’s to the betterment of the school and department as a whole.” The town received $33,846 to purchase and install 9 high quality cameras, 1 digital recorder, and 1 video monitor to be located in a secure location inside the school, as well as all the necessary cabling. The Chief believes this equipment will help to deter illegal and/or inappropriate activity on the school grounds. The system will be capable of monitoring all exterior activities including the parking area, the back and front of the building, as well as the back of the middle school. “These are the top quality available right now.”

Chairman Porter thanked the Chief for his efforts and the SAD Board for their support. Councilor Moriarty asked whether the SAD has committed to its match. The Chief indicated they have, and the “proposal and the grant is a starting point.” Councilor Moriarty also questioned who holds responsibility for watching or monitoring the videos? “Where does that expense fall?” The Chief explained the system will require no ongoing expense other than maintenance. “If we have an incident overnight, that will be an opportunity to review the video.”

Officer Peter Volk provided an update to his presentation in May regarding the underage drinking grant. “Since we last met” the department has issued nearly nineteen summons and arrests for under age alcohol violations and 7 drug violations. Officer Volk has received administrative authority to write premise violations instead of having to refer it to the liquor bureau, and he has initiated training other officers for this purpose as well. The department is considering the use of educational programs in the community. “A lot of these activities are occurring out of town, which makes the enforcement part hard. We’re focusing on the education” as well as enforcement, and hope to reach kids at an earlier age. The department is planning or initiating many programs, including: a Halloween Party for all ages at the Middle School this year and a “day camp” in April with various educational programs; a first offender program for youth charged with alcohol possession (this program will require participation by both the juvenile and parent); presentations through the High School health classes, and to teachers of younger children as well. Officer Volk encouraged use of the department’s website Wecare@cumberlandmaine.com for information and posting of comments related to youth issues. The “first offender program” is a trial program that will be mirrored at the county and state level eventually. The District Attorney’s Office has expressed interest in this program as
part of their sentencing process. “When it comes to violations we are going to be strict with our enforcement.”

Chief Charron referenced the loss of the department’s “foundation program - the 5th grade DARE program.” He has challenged Officer Dalbec, School Resource Officer, to video record his DARE presentations for broadcast over the local access channel during meal times and available for classroom use as well. “It’s not the same as in the class room,” but it would provide an opportunity to allow the schools to record and show them. Councilor Storey-King echoed her support for the DARE program. “It only takes a few years of us not having it to see maybe it did work.” In response to Councilor Perfetti’s question regarding the department’s interaction with parents when “they claim to not know” about a party at their residence. “Actually we do have the key program up and running” and he anticipates adding a link for more information about this program to the town’s website and access channel.

The Town Manager highlighted the efforts and success of the department, stating, “Those little things that might not cost a lot but mean a lot…are extremely important. The motorcycle is at a lot of the little league games. The challenge is…getting the parents involved…and connected.” Chairman Porter asked the Chief to provide the council with the cost of the Boot Camp and DARE program, and the Chief thanked him for the opportunity to provide that information.

Mr. shared thanks to the town and school board. “We should be very proud of the school board to implement those cameras inside the school in common areas. That will lessen the number of visits the PD makes to the school department in the future. I think it’s a great thing for our PD to be involved at the earliest possible stage they can be.” He encouraged the police to find a “person with alcohol addiction/behavior” to speak to the youth.

07 – 121 To set a public hearing date (October 8th) for sewer program revisions.
Motion by Councilor Perfetti, seconded by Councilor Copp, to set an October 8th Workshop date to consider revisions to the sewer program. (Workshop to be televised)
VOTE: UNANIMOUS PASSAGE 6-0

07 – 122 To set a public hearing date (October 22nd) to accept Route 100 zone changes.
Motion by Councilor Moriarty, seconded by Councilor Turner, to schedule October 8th to receive a report from the Town Manager and schedule an October 22nd public hearing to receive and act on the recommendations of the committee as passed on to us by the Planning Board.
VOTE: UNANIMOUS PASSAGE 6-0

07 -123 To hold a public hearing to consider and act on Committee/Board vacancies.
Motion by Councilor Moriarty, seconded by Councilor Storey-King to move the slate of nominees (below) on behalf of the Nominating Committee:

BOARD OF ADJUSTMENTS & APPEALS: Sam Wilkinson - to serve the balance of Peter Wilson’s term and Ed Kirstein to serve the balance of Sam Wilkinson’s term as Alternate.
BOARD OF ASSESSMENT REVIEW – Jeff Daigle to serve the balance of the vacant term.
SEWER APPEALS – Ed Kirstein, Don Fischer and Steve Sloan
HOUSING AUTHORITY - Norman Maze and Eileen Wyatt
GREELY SCHOLARSHIP COMMITTEE – Karen Finnegan
9-24-07 4
07 – 124  To accept a gift of a 2000 4WD pick-up truck from Steve Broadhead to the Cumberland Fire Dept.

The Manager assessed the value of the truck at between eight and twelve thousand dollars. Mr. Broadhead is a Cumberland resident and business owner. The pick-up truck will be utilized to assist Kevin Foster in his collection of toys during the department’s Christmas Toy Drive. During the “non toy collection season,” the fire department will use the truck for other department uses. The Manager thanked Mr. Broadhead for his donation.

Motion by Councilor Storey-King, seconded by Councilor Perfetti, to authorize the Town Manager to accept the gift of a 2000 four-wheel drive pickup truck from Steve Broadhead to the Cumberland Fire Department and to authorize the Town Manager to send a charitable contribution letter to Mr. Broadhead.

VOTE:          UNANIMOUS PASSAGE 6-0

IV.  NEW BUSINESS

**Councilor Copp** – Cumberland Fair is in full progress; a banner day Sunday; thanked the Police Chief for his work in acquiring the grant money.

**Councilor Perfetti** – received comment on “how great the town looked” from a Yarmouth resident.

**Councilor Storey-King** - she and Councilor Turner attended their first School Consolidation Workshop presented by Drummond and Woodsum and sponsored by the Dept of Education; outlined 13 steps and decisions for the consolidation committee to make in the next 9 weeks; important referendums facing us in the next 3 to 6 or 8 months; met with Yarmouth and Falmouth at 3:00; meeting again 10/03; many public hearings to be held; seems to be a lot not known by the general public; falls upon us to get that word out; for voting purposes the SAD budget will need to be broken out by a number of line items; once approved the board for that school unit is not allowed to spend more than 5% above the particular line item.

**Councilor Turner** – consolidation meeting - extraordinary day; made me more optimistic; work may be done in time to have a January referendum; he is “ecstatic” about the part of the law that says starting immediately the school budget will be voted by secret ballot.

**Chairman Porter** – thanked Councilors Turner and Storey-King; mentioned library’s programs around yardscaping, composting and community supported agriculture; requested Town Manager look into “perpetual yard sale” on Main Street and area behind Moss Side which backs up to Prince and Crestwood – some youth are congregating.

**Councilor Moriarty** – announced that on Saturday a team of men ages 50+ competed in a relay and placed 7th out of 86 teams.
Town Manager – received a copy of an easement deed and map from DEP outlining the Twin Brook conservation easement area - this area is a wetlands area that DEP wants us to protect in perpetuity; we can place trails there “but it’s hands off for other uses”; the easement and map will be an item for the 10/08 agenda – council asked for clarification on what will be closed and open to hunting in this area.

Motion by Councilor Moriarty, seconded by Councilor Copp, to schedule an October 8th public hearing for consideration of execution of the proposed declaration of covenants and restrictions.

VOTE: UNANIMOUS PASSAGE 6-0
TIME: 8:56 p.m.

The architect’s rendering of the Twin Brooks maintenance building went before the Planning Board last week and the board asked the council to reconsider the building façade to “soften the appearance.” The proposal is for cement board siding “which looks like cedar shingles” and costs approximately $25,000 more. We could also plant a lot of additional trees “and really hide the building.” Chairman Porter deferred the request until October 8th in order to allow the council to consider the requested revisions. Councilor Copp feels it’s important to improve upon a metal building, noting there are nine metal buildings in town, and “the town owns 8 of them.”

V. EXECUTIVE SESSION – pursuant to M.R.S.A. Title 1, Section 405 (6)(c) re: real or personal property.

Motion by Councilor Storey-King, seconded by Councilor Copp, to recess to Executive Session pursuant to M.R.S.A. Title 1, Section 405 (6) (C) re: real or personal property.

VOTE: UNANIMOUS PASSAGE 6-0
TIME: 9:23 p.m.

Motion by Councilor Moriarty, seconded by Councilor Copp, to return from Executive Session.

VOTE: UNANIMOUS PASSAGE 6-0
TIME: 9:55 p.m.

VI. ADJOURNMENT

Motion by Councilor Moriarty, seconded by Councilor Perfetti, to adjourn.

VOTE: UNANIMOUS PASSAGE
TIME: 9:55 p.m.

Respectfully submitted,

Nadeen Daniels, CMC
Town Clerk
ITEM
07-125

To set a Public Hearing date (October 22nd) for consideration of speed limit reduction request to MDOT for Greely Road (45 to 35 mph)
MEMORANDUM

Town of Cumberland, Maine
290 Tuttle Road
Cumberland Center, ME 04021
Telephone (207) 829-5559 • Fax (207) 829-2214

To: Town Council
From: William Shane, Town Manager
Date: October 2, 2007
Re: Greely Road speed limit reduction request

This will be the third time in the last ten years that the Town Council has requested the speed limit on Greely Road be reduced. This is the only “Town” road posted at 45 mph.

Remember, our process has been as follows:

1) Analyze request to determine if it is worthwhile to advertise for a Public Hearing.
2) Hold a Public Hearing.
3) Vote to send or not to send to MDOT.
4) Wait for reply.

I have attached my last letter to MDOT and the 2004 comments from State Trooper, Mike Edes, for your review.
May 26, 2004

Mr. Randy Dunton, P.E. PTOE
MDOT Traffic Engineer - Division 6
83 Pleasant Hill Road
Scarborough, Maine 04072

Re: Greely Road Speed Re-Evaluation Request

Dear Randy:

This summer the Twin Brook facility on Greely Road will open for its first season of use. Greely Road as you know has posted speed limits of 35 MPH and 45 MPH.

With more densely populated neighborhoods, farms and farming equipment using the road as well as pedestrian and vehicular traffic to the new athletic facility, I would request that you re-evaluate the 45 MPH speed zone along Greely Road and consider if a reduction to 35 MPH could be supported.

We are also seeing an increased amount of traffic because of the higher speed limit on Greely versus Tuttle Road. Both roads run parallel between Route 9 and Route 1 but Tuttle is posted at 35 MPH.

A Public Hearing was held on this issue on Monday, May 24, 2004 and the Town Council after Public Comment voted 7-0 to send this to your office for further consideration.

Sincerely,

William R. Shane
Town Manager
William Shane

From: William Shane
Sent: Friday, June 04, 2004 7:23 AM
To: Steve Moriarty (smoriarty@nhdlaw.com); B Stiles (wstiles1@maine.rr.com); Bill Stiles (wstiles@maine.rr.com); Donna Damon (publicservant1@aol.com); Harland Storey (cstorey@gwi.net); Jeffrey.Porter@mail.doc.gov; Mark Kuntz (chinook96@msn.com); Mesiti5@aol.com; Mike Savasuk (mxslaw@maine.rr.com); William Shane; Nadeen Daniels
Subject: FW: Greely Road speed limit
Attachments: MDOT- Dunton May 26, 2004.doc

Mike,

Thank you for your comments. I have forwarded them to the Town Council. Professionally, I don't anticipate a reduction in the speed. MDOT did a study several years ago and found the road to be properly posted for speed. With the opening of Twin Brook on Greely Road, the section of Greely Road from Main St to Hillside should be 35 MPH, but with the remainder of the road rural and the houses set back off the road I'm not confident MDOT will be reducing the speed limit.

I have attached my letter to MDOT for your use. You may wish to contact Randy Dunton directly as he is the deciding authority on this request.

We have a similar request from Forest Lake Road on the Council agenda for June 14th for a speed limit reduction. I'd be happy to drop you an e-mail when Speed Reduction requests come before the Town Council. With your extensive State Police background and knowledge of the area your insight would be helpful to the Town Council when reviewing these matters.

Thank you again for taking the time to share your concerns

Bill

William R. Shane, P.E.
Town Manager
250 Tuttle Road
Cumberland, Maine 04021

(207) 829-2205 Phone
(207) 829-2224 FAX

wshade@cumberlandmaine.com

-----Original Message-----
From: Mike Edes [mailto:sp238@maine.rr.com]
Sent: Thursday, June 03, 2004 6:38 PM
To: William Shane
Subject: Greely Road speed limit

Hi Bill,
I was just skimming through the Falmouth Forecaster and I noticed the article about the town council's vote to ask for a lower speed limit on Greely Road. I wish I had noticed that this was going to be brought up at the council meeting, as I would of like to of given my opinion to the council on the subject. For what it's means, I thought I'd throw in my 2-cents worth.

I've lived on Greely Road for the past 12-years. My property borders the corner of Edes & Greely Road. In the entire time that I have lived there and the thousands of times that I have travelled back and forth,
I have only written 2 speeding tickets on that stretch of the roadway. Working the midnight shift, prior to my securing for day I have purposely set up with radar a number of mornings in the area of the Ingraham residence. I can tell you as general rule, the speed limit in that area is followed and if anything, a large percentage of the vehicles going through there are actually below the speed limit. Lowering the speed limit is not going to solve the problem of the occasional nit-wit driving through there over the speed limit. Cumberland PD does a great job patrolling the town, but they can sit there for 8-hrs straight and 5 minutes after they leave, somebody might come through over the speed limit. This same problem will occur whether the limit is 35 or 45 mph.

I am totally against lowering the speed limit in that area. It is unnecessary and there is not a speeding problem on that road. If there was a problem, with two kids of my own, I would be the first to let you know. Like I said, my radar is on everytime I travel up and down Greely Road and very rarely do I encounter a speeder.

Let me know if you would like any other information on this and I would be more than happy to make myself available.

Sincerely,

Mike
ITEM
07-126

To hear a report from Route 100 Committee re: zoning use and map changes; design standards and related subdivision ordinance amendments, and to confirm the October 22nd Public Hearing date
ITEM
07-127

To hear a report and set a Public Hearing date (October 22\textsuperscript{nd}) for consideration of junkyard/recycler permit renewal, Greenlaw Salvage located at 1 Longwood Rd
To: Town of Cumberland Council  
From: William C. Longley Jr. CEO  
Subject: Green law’s Salvage  
Date: 10-04-07  
CC: William Shane, Town Manager  
Nadine Daniels, Town Clerk  
Thomas Greenlaw, Green law’s Salvage

At your last meeting I was asked to meet with Mr. Greenlaw and advise him of the additional information needed for the Council to review and approve the Automobile Graveyard / Junkyard License. Bill Shane and I met with Tom Greenlaw at Town Hall and provided him with the attached memo dated 9-27-07. This memo is written to document the items that I understood the Council would like to review prior to the Public Hearing which I believe will fall on October 22nd or later. Mr. Greenlaw stated he was not sure how many of the requested items could be provided he has not been that busy this past year because the price paid for junk was down. We discussed many of the pictures (included in your packets) and he stated the photos just show an “UGLY JUNKYARD, JUNKYARDS ARE NOT PRETTY”. We also discussed the possibility of the Department of Environmental Protection conducting a site visit. He said that would be agreed to a meeting. I have set up a meeting with Eric Hamlin who works in the Bureau of Remediation and Waste Management under the Division of Solid Waste Management at DEP. He and I will visit with Mr. Greenlaw at 2PM on Thursday the 11th of October at the 1 Longwoods Road location. I will report to you our findings as soon after as possible.
To:         Thomas Greenlaw  
From:      William C. Longley Jr. CEO 
Subject:   GREENLAW SALVAGE  
Date:      09-27-07  
CC:        William Shane, Town Manager  
            Town Attorney  

At the recent Council meeting I gave a report to the Council that included the  
attachments that were mailed to you and you have advised me that you received. Based  
on that information and the discussion that was held the Council directed the Manager  
and I to meet with you and review the documentation that will be required to  
accompany your request for renewal of the permit to operate your facility at  
1 Longwoods Road in the Town of Cumberland Tax Map R-03 Lot 20D. As the  
attached shows that permit does expire on 10-31-07. You will need to provide the  
documentation to the Town Manager on or before the 10-15-07. The items needed per  
30A-MRSA ss 3754 .5 Operating Standards:  

A. A written description of all fluid handling methods and the Name Address and Invoices  
of all fluids removed from the site since 10-01-06  

D. All written documentation to prove that your business is “Viable”. This may include,  
but is not limited to, Federal and State Income Tax documents for the last three years.  

E. A copy of your log showing the date each vehicle was acquired, a copy of the vehicle’s  
title or bill of sale and the date or dates upon which all fluids, refrigerant, batteries, and  
mercury switches were removed.  

F. A list of all motor vehicles, appliances, and any other items acquired by and on the  
premises prior to October 1, 2005 and the dates that all fluids, refrigerant, batteries, and  
mercury switches were removed. (Prior to Jan. 1, 2007) Also a list that includes the same  
information for all new items since October 1, 2005 until current date.
October 1, 2007

William R. Shane, Town Manager
Town of Cumberland
290 Tuttle Road
Cumberland, ME 04021

Re: Greenlaw Junkyard

Dear Bill:

Given the upcoming Council hearing on the Greenlaw junkyard, I thought I would send you a copy of the revised statute. The legislature of 2003 substantially changed the statute to tighten it up. See 30-A M.R.S.A. § 3751 et seq. Also, you should note that the determination that benefited Mr. Greenlaw some 20 plus years ago, was that he was a grandfathered commercial use that engaged in salvage not in disposal. Disposal, to extent that there was any, was an accessory to the principal use. This is an important distinction given that some of the materials that Mr. Greenlaw seems to be storing at this point are not salvageable and not accessory to his principal use.

Please note that § 3754 has specific notice requirements in regard to relicensing that may be broader than you have customarily done and I would bring these both to the Town Clerk’s attention and Mr. Greenlaw’s, since he is actually responsible for some of these notices. Further, I would note that § 3754-A contains a limitation regarding various setback requirements that did not used to be relevant and the Code Enforcement Officer may wish to check compliance with those, as well as the operating standards contained in that particular section.

~ Over 50 Years of Service ~
After you and Bill Longley have had a chance to review the enclosed, please feel free to call me with any questions.

Very truly yours,

[Signature]

Kenneth M. Cole III

KMC/lts
Enclosure
MUNICIPALITIES AND COUNTIES
Title 30-A

the manner authorized and directed by the board of directors. The treasurer of the district may execute any deeds, bills of sale or documents required for that purpose. All money, if any, remaining in the control of the treasurer of the district must be paid to the municipalities comprising the district as of the date of dissolution in accordance with the formula then in effect for the payment of any operating deficit. The officers of the district shall file notice of dissolution with the office of the Secretary of State as required in Title 18, section 337, 1997, c. 698, § 2.

SUBPART 6
REGULATION, LICENSES AND PERMITS

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CHAPTER 183
ECONOMIC REGULATION

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SUBCHAPTER I
JUNKYARDS AND AUTOMOBILE GRAVEYARDS

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§ 3751. Purpose

Junkyards and so-called “auto graveyards” have been steadily expanding and frequently encroach upon highways. These junkyards and graveyards have become a nuisance and a menace to safe travel on public ways, often distracting the attention of drivers of motor vehicles because it appears cars are parked on the highway or that an accident has occurred. It is declared that such junkyards and automobile graveyards are a nuisance and are properly subject to regulation and control.

It is recognized that recycling of automobiles is a business enterprise that, when conducted in accordance with certain standards, differs from the enterprise of an automobile graveyard and that adoption of uniform state standards for this type of business enterprise would assist in development and regulation of that business.

Junkyards, automobile graveyards and automobile recycling businesses pose potential risks to the environment, particularly to groundwater and surface water quality if gasoline, oil or other fluids are not managed and disposed of properly. Proper location and operation of these facilities are critical to ensure protection of groundwater and surface water quality, other natural resources and the health and welfare of Maine citizens. These facilities may
create nuisance conditions potentially affecting abutting landowners and others if not located and operated properly. For these reasons, it is declared that these facilities are appropriately subject to certain environmental and operational standards and to appropriate municipal and state regulation.

1987, c. 737, § A, 2; 1993, c. 173, § 1; 2003, c. 312, § 2.

Historical and Statutory Notes

2003 Legislation
Laws 2003, c. 312, § 2, added the third paragraph.

§ 3752. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Automobile graveyard. “Automobile graveyard” means a yard, field or other outdoor area used to store 3 or more unregistered or uninspected motor vehicles, as defined in Title 29-A, section 101, subsection 42, or parts of the vehicles. ‘Automobile graveyard’ includes an area used for automobile dismantling, salvage and recycling operations.

A. “Automobile graveyard” does not include:

1. An area used for temporary storage of vehicles or vehicle parts by an establishment or place of business that is primarily engaged in doing vehicle repair work to make repairs to render a motor vehicle serviceable. In order for a vehicle’s storage to be considered temporary, it must be removed from the site within 180 calendar days of its receipt;

2. An area used by an automobile hobbyist to store, organize, restore or display antique autos, antique motorcycles, classic vehicles, horseless carriages, reconstructed vehicles, street rods or parts of these vehicles as these vehicles are defined in Title 29-A, section 101 as long as the hobbyist’s activities comply with all applicable federal and state statutes and rules and municipal ordinances, other than ordinances that are more restrictive than this subsection regarding the storage of vehicles or vehicle parts that are collected by a hobbyist, except that a municipal ordinance may require areas used by an automobile hobbyist to comply with the screening requirements in section 3754-A, subsection 1, paragraph A and the standards in section 3754-A, subsection 5, paragraph A, paragraph B, subparagraph (1) and paragraph C. For the purposes of this subparagraph, an automobile hobbyist is a person who is not primarily engaged in the business of selling any of those vehicles or parts from those vehicles;

3. An area used for the parking or storage of vehicles, vehicle parts or equipment intended for use by a municipality, quasi-municipal entity or state or federal agency;

4. An area used for the storage of operational farm tractors and related farm equipment, log skidders, logging tractors or other vehicles exempted from registration under Title 29-A, chapter 5;

5. An area used for the parking or storage of vehicles or equipment being offered for sale by a dealer, equipment dealer, trailer dealer or vehicle auction business as defined in Title 29-A, section 851;

6. An area used for the storage of vehicles by an establishment or place of business that is primarily engaged in business as a new vehicle dealer as defined in Title 29-A, section 851;

7. An area used for temporary storage of vehicles by an establishment or place of business that is primarily engaged in business as an insurance salvage pool. In order for a vehicle’s storage to be considered temporary under this subparagraph, the vehicle must be removed from the site within 180 days of receipt of title by the business; or

8. An area used for the parking or storage of operational commercial motor vehicles, special equipment or special mobile equipment as defined in Title 29-A, section 101 that is temporarily out of service but is expected to be used by the
vehicle or equipment owner or by an operator designated by the owner. This subsection does not exempt an area used for the parking or storage of equipment or vehicles that are not operational while stored or parked in the area.

1-A. Automobile recycling business. "Automobile recycling business" means the business premises of a dealer or a recycler licensed under Title 29-A, sections 851 to 1112 who purchases or acquires salvage vehicles for the purpose of reselling the vehicles or component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles, as long as 80% of the business premises specified in the site plan in section 3755-A, subsection 1, paragraph C is used for automobile recycling operations.

A. "Automobile recycling business" does not include:
(1) Financial institutions as defined in Title 9-B, section 131, subsections 17 and 17-A;
(2) Insurance companies licensed to do business in the State;
(3) New vehicle dealers, as defined in Title 29-A, section 851, licensed to do business in the State; or
(4) That portion of the business premises that is used for temporary storage of vehicles by an establishment or place of business that is primarily engaged in business as an insurance salvage pool. In order for a vehicle's storage to be considered temporary under this subparagraph, the vehicle must be removed from the site within 180 days of receipt of title by the business.


3. Interstate System. "Interstate System" means those portions of the Maine Turnpike and the state highway system incorporated in the National System of Interstate and Defense Highways, as officially designated by the Department of Transportation.

4. Junkyard. "Junkyard" means a yard, field or other outside area used to store, dismantle or otherwise handle:
A. Discarded, worn-out or junked plumbing, heating supplies, electronic or industrial equipment, household appliances or furniture;
B. Discarded, scrap and junked lumber; and
C. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap ferrous or nonferrous material.
D. Deleted. Laws 2003, c. 312, § 5.

5. Primary System. "Primary System" means that portion of the state highway system which the Department of Transportation has by official designation incorporated into the Federal-Aid Primary System.


Historical and Statutory Notes

2003 Legislation
Laws 2003, c. 312, § 3, rewrote subsec. 1, which preter thereto read:
1. Automobile graveyard. "Automobile graveyard" means a yard, field or other area used to store 3 or more unserviceable, discarded, worn-out or junked motor vehicles as defined in Title 29-A, section 101, subsection 42, or parts of such vehicles.
A. "Automobile graveyard” does not include any area used for temporary storage by an establishment or place of business that is primarily engaged in doing auto body repair work to make repairs to render a motor vehicle serviceable.

B. "Automobile graveyard includes an area used for automobile dismantling, salvage and recycling operations."
Laws 2003, c. 312, § 4, in subsec. 1-A, substituted "premises of a dealer or a recycler licensed under Title 29-A, sections 851 to 1112" for "premises of a person"; added par. 3; and made a substantive change.
Laws 2003, c. 312, § 5, in subsec. 4, in the introductory paragraph, inserted "outside" following "field or other"; inserted “, dismantle or otherwise handle”; in par. A, inserted "electronic or industrial equipment," substituted "or furniture" for "and furniture":
ECONOMIC REGULATION
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para. B and C, made nonsubstantive changes; and deleted par. D, which prior thereto read:
“D. Garbage dumps, waste dumps and sanitary fills.”
Laws 2003, c. 312, § 6, repealed subsec. 6, which prior thereto read:
“6. Recycling or recycling operations. ‘Recycling or recycling operations’ means the dismantling of motor vehicles for the purpose of reselling the component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles.”
2005 Legislation
Laws 2005, c. 424, § 1, par. A, in subpar. (2), at the end of the first sentence, added “, except that a municipal ordinance may require areas used by an automobile hobbyist to comply with the screening requirements in section 3754–A, subsection 1, paragraph A and the standards in section 3754–A, subsection 5, paragraph A, paragraph B, subparagraph (1) and paragraph C”.

Research References
ALR Library
50 ALR 3rd 837, Validity, Construction, and Application of Zoning Ordinance Relating to Operation of Junkyard or Scrap Metal Processing Plant.

Notes of Decisions
Attorney fees 7

1. Constitutionality
Automobile graveyard and junkyard statute, which prescribed use of land to store discarded, scrap, worn, or junked motor vehicles or items, was not impermissibly vague, as claimed by landowner whose property contained large amounts of personal property, including vehicles in various states of disrepair, metal drums, piping, lumber, scrap metal, television antennas, styrofoam, old plumbing supplies, and old appliances. Town of Mount Desert v. Smith (2000) Me., 751 A.2d 445. Zoning And Planning ⇒ 28

7. Attorney fees
Town was required to file cross-appeal to Superior Court to preserve issue of whether town was entitled to attorney fees in connection with district court’s decision that landowner was in violation of automobile graveyard and junkyard statute. Town of Mount Desert v. Smith (2000) Me., 751 A.2d 445. Zoning And Planning ⇒ 749

§ 3753. Permit required
A person may not establish, operate or maintain an automobile graveyard, automobile recycling business or junkyard without first obtaining a nontransferable permit from the municipal officers of the municipality in which the automobile graveyard, automobile recycling business or junkyard is to be located, or from the county commissioners of the county of any unorganized territory in which the automobile graveyard, automobile recycling business or junkyard is to be located. Permits issued to an automobile graveyard or junkyard under this section are valid until the first day of the following year; except that, beginning in calendar year 2004, permits issued to an automobile graveyard or junkyard under this section are valid until the first day of October of the following year. Permits issued to an automobile recycling business under this section are valid for 5 years from the date of issuance and are renewable provided that the permit holder furnishes a sworn statement, annually, on the anniversary date of the granting of the permit, that the facility complies with the standards of operation applicable at the time of issuance of the permit. A person operating a business that involves the recycling of automobiles may operate under a permit for an automobile graveyard or a permit for an automobile recycling business.

Historical and Statutory Notes
2003 Legislation
Laws 2003, c. 312, § 7, in the second sentence, inserted “; except that, beginning in calendar year 2004, permits issued to an automobile graveyard or junkyard under this section are valid until the first day of October of the following year”; and made a nonsubstantive change.
§ 3754. Hearings

Municipal officers or county commissioners, as provided for in section 3753, shall hold a public hearing before granting a permit to establish a new automobile graveyard, automobile recycling business or junkyard and may hold public hearings annually regarding the relicensing of these facilities. Municipal officers or county commissioners shall require an applicant to provide proof of mailing the notice of the application to all abutting property owners. Municipal officers or county commissioners shall also post a notice of the hearing at least 7 and not more than 14 days before the hearing in at least 2 public places in the municipality or unorganized territory and publish a notice in one newspaper having general circulation in the municipality or unorganized territory in which the automobile graveyard, automobile recycling business or junkyard is to be located. The municipal officers or county commissioners shall give written or electronic notice of the application to establish a new automobile graveyard or automobile recycling business to the automobile dealer licensing section of the Department of the Secretary of State, Bureau of Motor Vehicles by mailing a copy of the application at least 7 and not more than 30 days before the hearing. The municipal officers or county commissioners shall give written notice of the application to the public water supplier if the application is for an automobile graveyard, automobile recycling business or junkyard located within the supplier’s source water supply area. The notice may be given by mailing a copy of the application at least 7 and not more than 14 days before the hearing.


Historical and Statutory Notes

1999 Legislation

Laws 1999, c. 761, § 5, added the fourth and fifth sentences.

2003 Legislation

Laws 2003, c. 312, § 8, rewrote this section, which prior thereto read: “Municipal officers or county commissioners, as provided for in section 3753, shall hold a public hearing before granting a permit to establish, operate or maintain an automobile graveyard, automobile recycling business or junkyard. They shall post a notice of the hearing at least 7 and not more than 14 days before the hearing in at least 2 public places in the municipality or unorganized territory and publish a notice in one newspaper having general circulation in the municipality or unorganized territory in which the automobile graveyard, automobile recycling business or junkyard is to be located. The municipal officers or county commissioners shall give written notice of the application to the Department of Transportation by mailing a copy of the application at least 7 and not more than 14 days before the hearing. The municipal officers or county commissioners shall give written notice of the application to a public water supplier for any automobile graveyard, automobile recycling business or junkyard located within its source water supply area. The notice may be given by mailing a copy of the application at least 7 and not more than 14 days before the hearing.”

2005 Legislation

Laws 2005, c. 424, § 2 rewrote the section, which read: “Municipal officers or county commissioners, as provided for in section 3753, shall hold a public hearing before granting a permit to establish a new automobile graveyard, automobile recycling business or junkyard and may hold public hearings annually regarding the relicensing of these facilities. Municipal officers or county commissioners shall require an applicant to provide proof of mailing the notice to abutting property owners of an application. Municipal officers or county commissioners shall also post a notice of the hearing at least 7 and not more than 14 days before the hearing in at least 2 public places in the municipality or unorganized territory and publish a notice in one newspaper having general circulation in the municipality or unorganized territory in which the automobile graveyard, automobile recycling business or junkyard is to be located. The municipal officers or county commissioners shall give written notice of the application to establish a new automobile graveyard or automobile recycling business to the automobile dealer licensing section of the Department of the Secretary of State, Bureau of Motor Vehicles by mailing a copy of the application at least 7 and not more than 14 days before the hearing. The municipal officers or county commissioners shall give written notice of the application to a public water supplier for any automobile graveyard, automobile recycling business or junkyard located within its source water supply area. The notice may be given by mailing a copy of the application at least 7 and not more than 14 days before the hearing.”
3754-A. Limitations on graveyard, automobile recycling business and junkyard permits

1. Highways; Interstate System and Primary System. A permit may not be granted for an automobile graveyard or junkyard within 1,000 feet of the right-of-way of any highway incorporated in both the Interstate System and Primary System or within 600 feet of the right-of-way of any other highway, except for:
   A. Those automobile graveyards or junkyards that are kept entirely screened from ordinary view from the highway at all times by natural objects, plantings or fences. Screening required by this paragraph must be:
      (1) At a height, density and depth sufficient to accomplish complete screening from ordinary view;
      (2) Well constructed and properly maintained at a minimum height of 6 feet;
      (3) Placed outside of the highway right-of-way; and
      (4) Acceptable to the municipal officers or county commissioners; and
   B. Those automobile graveyards or junkyards located within areas that have been zoned for industrial use and located more than 600 feet but less than 1,000 feet from the right-of-way of any highway incorporated in both the Interstate System and Primary System.

2. Limitation on new permits. A permit may not be granted for an automobile graveyard or junkyard established after October 3, 1973 and located within 100 feet of any highway.

3. Public facilities. A new permit may not be granted for an automobile graveyard or junkyard that is:
   A. Located within 300 feet of a public building, public park, public playground, public bathing beach, school, church or cemetery; and
   B. Within ordinary view from a facility under paragraph A.

4. Public and private water supplies. A permit may not be granted for an automobile graveyard, junkyard or automobile recycling business that handles junk, scrap metal, vehicles or other solid waste within 300 feet of a well that serves as a public or private water supply. This prohibition does not include a private well that serves only the automobile graveyard, junkyard, automobile recycling business or the owner’s or operator’s abutting residences. This prohibition does not apply to wells installed after an automobile graveyard, junkyard or automobile recycling business has already received a permit under section 3753.

Automobile graveyards, junkyards and automobile recycling businesses operating under the terms of permits issued prior to the effective date of this subsection and handling junk, scrap metal, vehicles or other solid waste within 300 feet of wells that serve as public or private water supplies may continue to operate in those locations under the terms of those permits. Municipal officers or county commissioners may renew a permit allowing the continued handling of junk, scrap metal, vehicles or other solid waste within 300 feet of a well serving as a public or private water supply as long as no further encroachment toward the well occurs. The municipal officers or county commissioners may not renew a permit if there is substantial, credible evidence that the permitted activities have caused contamination of the well.

5. Operating standards. All automobile graveyards and junkyards permitted pursuant to section 3753 are required to comply with the following standards:
   A. All fluids, including but not limited to, engine lubricant, transmission fluid, brake fluid, power steering fluid, hydraulic fluid, engine coolant, gasoline, diesel fuel and oil, must be properly handled in such a manner that they do not leak, flow or discharge into or onto the ground or into a body of water;
   B. A vehicle containing fluids may not be stored or dismantled:
      (1) Within 100 feet of any body of water or freshwater wetland, as defined by Title 38, section 436-A, subsection 5;
      (2) Within the 100-year floodplain; or
(3) Over a mapped sand and gravel aquifer;
C. Junk, scrap metal, vehicles or other solid wastes may not be placed or deposited, directly or indirectly, into the inland waters or tidal waters of the State or on the ice of inland waters or tidal waters or on the banks of inland waters or tidal waters in such a manner that they may fall or be washed into these waters;
D. Junkyard and automobile graveyard owners must demonstrate at the time of licensing that the facility or facilities for which they seek permits are, or are part of, a viable business entity and the facility or facilities are actively engaged in the business of salvaging, recycling, dismantling, processing, repairing or rebuilding junk or vehicles for the purpose of sale or trade;
E. A log must be maintained of all motor vehicles handled that includes the date each vehicle was acquired, a copy of the vehicle's title or bill of sale and the date or dates upon which all fluids, refrigerant, batteries and mercury switches were removed;
F. All fluids, refrigerant, batteries and mercury switches must be removed from motor vehicles that lack engines or other parts that render the vehicles incapable of being driven under their own motor power or that are otherwise incapable of being driven under their own motor power, appliances and other items within 180 days of acquisition. Motor vehicles, appliances and other items acquired by and on the premises of a junkyard or automobile graveyard prior to October 1, 2005 must have all fluids, refrigerant, batteries and mercury switches removed by January 1, 2007. Fluids required to be removed under this paragraph must be removed to the greatest extent practicable;
G. Storage, recycling or disposal of all fluids, refrigerant, batteries and mercury switches must comply with all applicable federal and state laws, rules and regulations; and
H. All fluids, refrigerant, batteries and mercury switches must be removed from motor vehicles, appliances and other items before crushing or shredding. Fluids required to be removed under this paragraph must be removed to the greatest extent practicable.

6. Rules. A permit, other than a limited-term permit as described in this section, may not be granted for an automobile graveyard or automobile recycling business that is not in compliance with all applicable provisions of the automobile dealer or recycler licensing provisions of Title 29-A, chapter 9. Municipal officers or county commissioners may award a limited-term permit conditioned upon an automobile graveyard's or automobile recycling business's demonstrating compliance with the provisions of Title 29-A, chapter 9 within 90 calendar days of the issuance of the municipal or county limited-term permit.

6-A. Relationship to state storm water requirements. After October 30, 2005, municipal officers or county commissioners may reject an application for an automobile graveyard or automobile recycling business if the applicant has not demonstrated that:
A. A notice of intent has been filed with the Department of Environmental Protection to comply with the general permit provisions for storm water discharges; or
B. The Department of Environmental Protection has determined that a storm water discharge permit is not required.

7. Local ordinances. This subchapter may not be construed to limit a municipality's home rule authority to enact ordinances with respect to automobile graveyards, automobile recycling businesses and junkyards that the municipality determines reasonable, including, but not limited to, ordinances concerning:
A. Compliance with state and federal solid waste and hazardous waste regulations;
B. Fire and traffic safety;
C. Levels of noise that can be heard outside the premises;
D. Distance from existing residential or institutional uses;
E. The effect on groundwater and surface water, as long as municipal ordinances on groundwater are no less stringent than or inconsistent with rules adopted by the Department of Environmental Protection; and
F. Best management practices for automobile graveyards, junkyards and automobile recycling businesses developed by the Department of Environmental Protection.

Municipal officers or county commissioners shall consider compliance with these local ordinances in deciding whether to grant or deny a permit for any automobile graveyard, automobile recycling business or junkyard and in attaching conditions of approval to a permit.

8. Applicability. Municipalities may apply local ordinances adopted previously under subsection 7 pertaining to automobile graveyards and junkyards to an automobile recycling business without amending those ordinances to include automobile recycling businesses. A municipality must provide notice of its intent to apply these ordinances at the time an application for an automobile recycling business permit is filed.

9. Right of entry. Municipal officers or their designees may, to carry out the provisions of this subchapter or to determine compliance with any laws, ordinances, license or permit approvals, decisions or conditions:

A. Enter any automobile graveyard, junkyard or automobile recycling business property and inspect all outside areas, equipment and activities at reasonable hours for compliance with the laws or ordinances set forth in accordance with this subchapter; and

B. Enter any building on the property with the consent of the owner, occupant or agent to inspect the building and activities within the building for compliance with the laws or ordinances set forth in accordance with this subchapter.

A municipal officer's or designee's entry onto property under this subsection is not a trespass.

10. Standard for permit. The municipal officers or county commissioners may issue a permit to an automobile graveyard or junkyard if that automobile graveyard or junkyard meets the operating standards set forth in subsection 5:

For purposes of revocation or suspension of a permit pursuant to section 3758–A, subsection 5, each of the standards set forth in this section is a condition of a permit.


Historical and Statutory Notes

2005 Legislation

Laws 2005, c. 247, § 1, in subsec. 5, par. A, substituted "power steering fluid, hydraulic fluid, engine coolant, gasoline, diesel fuel and oil" for "battery acid, engine coolant, gasoline and oil".


Laws 2005, c. 247, § 3, in subsec. 5, enacted pars. E to H; § 2 made corresponding changes to pars. C and D; and § 4 enacted subsec. 6–A.

Laws 2005, c. 247, § 7 provides:

"Sec. 7. Effective date. This Act takes effect October 15, 2005."

Laws 2005, c. 424, § 8, in subsec. 4, in the second paragraph, at the end of the second sentence, deleted "and there is no evidence of contamination of the well", and added the third sentence.

Laws 2005, c. 424, § 4, without reference to Laws 2005, c. 247, § 2, in subsec. 5, par. D, inserted "and the facility or facilities are actively" and substituted "sale or trade" for "sale, trade or personal use".

Historical and Statutory Notes


Laws 2005, c. 424, § 6 added the last paragraph.

Laws 2005, c. 683, § A–51, in subsec. 5, rewrote par. D which, as amended by Laws 2005, c. 247, § 2, formerly read:

"D. Junkyard and automobile graveyard owners must demonstrate at the time of licensing that the facility or facilities for which they seek permits are, or are part of, a viable business entity engaged in the business of salvaging, recycling, dismantling, processing, repairing or rebuilding junk or vehicles for the purpose of sale, trade or personal use."

Par. D, as amended by Laws 2005, c. 424, § 4, formerly read:

"D. Junkyard and automobile graveyard owners must demonstrate at the time of licensing that the facility or facilities for which they seek permits are, or are part of, a viable business entity and the facility or facilities are actively engaged in the business of salvaging, recycling, dismantling, processing, repairing or rebuilding junk or vehicles for the purpose of sale or trade."

Derivation:

R.S.1954, c. 100, § 140.
§ 3755. Repealed. Laws 2003, c. 312, § 10

Historical and Statutory Notes

See, now, 30-A M.R.S.A. § 3754-A

§ 3755-A. Automobile recycling business permits; operation standards

1. Application. An application for an automobile recycling business permit must include the following information:

A. The name and address of the property owner;
B. The name and address of the person or entity who will operate the site; and
C. A site plan, including:
   (1) Property boundary lines;
   (2) A description of the soils on the property;
   (3) The location of any sand and gravel aquifer recharge areas;
   (4) The location of any residence or school within 500 feet of where the cars will be stored;
   (5) The location of any body of water on the property or within 200 feet of the property lines;
   (6) The boundaries of the 100-year flood plain;
   (7) The location of all roads within 1,000 feet of the site;
   (8) A plan for containment of fluids, containment and disposal of batteries and storage or disposal of tires; and
   (9) The location within the property boundary lines where vehicles are drained, dismantled or stored.

2. Standards for permit. The municipality may issue a permit to an automobile recycling business if the business demonstrates that the business meets the operation standards set forth in subsection 3.

3. Operation standards. An automobile recycling business licensed under this section must meet the following standards.

A. The site of the yard must be enclosed by a visual screen that complies with the screening requirements of section 3754-A.
B. A vehicle containing fluids may not be stored within 100 feet of any body of water or freshwater wetland, as defined by Title 38, section 436-A, subsection 5.
C. A vehicle may not be dismantled or stored within 500 feet of a school, church, cemetery or public playground or park that existed on the date the permit was issued.
D. A vehicle may not be dismantled or stored over a sand and gravel aquifer or aquifer recharge area.
E. A vehicle containing fluids may not be dismantled or stored within the 100-year flood plain.
F. Except as provided in subsection 3754-A, subsection 4, a vehicle may not be dismantled or stored within 300 feet of a well that serves as a public or private water supply, excluding a private well that serves only the automobile recycling business or the owner or operator's abutting residence.
G. A vehicle may not be located or dismantled closer than 20 feet from any lot line, unless the operator has notarized written permission from the abutting property owner.
ITEM 07-128

To set a Public Hearing date (October 22nd) for Cumberland Salvage junkyard/recycler permit renewal
Recently I toured the facility known as Cumberland Salvage. As noted during previous inspections, the area appears to be adequately fenced and screened from public streets and also a new earthen berm has been installed along the boundary with a new residential subdivision called Foxes Gore. Additionally, the operation continues to be neat and organized.

Based upon my observations, I would recommend approval of the Annual Junkyard permit, reserving the right to inspect as needed.
ITEM
07-129

To set a date (October 22\textsuperscript{nd}) to hear quarterly report from Town Council Finance Committee
No materials for this item
ITEM 07-130

To hold a Public Hearing and authorize Town Manager to execute a Conservation Easement for Wetland Preservation at Twin Brook
September 20, 2007

MEMO TO: Bill Shane
FROM: John Kennedy
DATE: September 20, 2007
SUBJECT: TWIN BROOK RECREATION AREA
          WETLAND PRESERVATION DECLARATION

Attached is Declaration for the wetland preservation area at Twin Brook.

I have incorporated Natalie Burns’ comments after passing them by Marybeth at MDEP.

I have set this document up for your signature. I am not sure whether you will need council authorization to sign it or not.

Keep in mind that it needs to be signed, recorded and submitted to MDEP by October 1.

If this cannot happen because of Council meeting schedule or for some other reason, please let me know so that I can notify Marybeth.

Also, I assume that your office will take care of the actual recording of the Declaration.
(If not, please let me know and I will have someone from hear handle it.) After recording, please provide me with a copy of the recorded document and I will send to MDEP.
TWIN BROOK RECREATION AREA
CUMBERLAND MAINE
WETLAND PRESERVATION AREA
DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made this
day of October, 2007, by TOWN OF CUMBERLAND, (a Maine
municipality having a place of business at 290 Tuttle Road, Cumberland, Cumberland
County, Maine, 04021, (herein referred to as the "Declarant"), pursuant to State of Maine
Department of Environmental Protection Natural Resource Protection Act (Tier 2),
Project Number L-20728-28-C-M, dated July 13, 2007 (hereinafter referred to as
"Order"), relating to preservation of an approximately 10.2 acre parcel of land south of
Greely Road and east of the Maine Central Railroad.

RECITALS

WHEREAS, the Declarant holds title to certain real property situated in Cumberland,
Maine described in a deed from Katherine Fowler and Gregory Fowler dated October 31,
1996, and recorded in Book 12796 Page 065-067 at the Cumberland County Registry of
Deeds; and

WHEREAS, Declarant desires to place certain deed covenants, under the terms and
conditions herein, over a portion of said real property (hereinafter referred to as the
"Covenant Area") described as follows:

A certain parcel of land southerly of and adjacent to the Maine Central Railroad in the
Town of Cumberland, Cumberland County, Maine, more particularly described as
follows:

Beginning at a point located on the Maine Central Railroad right-of-way said point being
located N59°49′28″E, 847.58 feet more or less of a 5/8-inch bar found at the northeast
corner of land now or formerly of Constance and Richard Sweetser as described in
CCRD Book 2845, Page 13 and the easterly right-of-way of said railroad as shown on a
Standard Boundary Survey on Greely Road for the Town of Cumberland recorded in
CCRD Plan Book 196, 334;

Thence northerly along said railroad right-of-way along an arc having a radius of
8,541.67 feet, a distance of 335.15 to a point;

Thence S53°13′52″E across land of the grantor a distance of 158.09 feet to a point;

Thence S89°08′28″E across land of the grantor a distance of 273.28 feet to a point;

Thence S34°18′23″E across land of the grantor a distance of 264.23 feet to a point;
Thence S21°58′35″E across land of the grantor a distance of 532.74 feet to a point and land now or formerly of Gregory and Katherine Fowler;

Thence S26°27′25″W along land of said Fowler a distance of 205.00 feet to a point;

Thence N51°20′38″W across land of the grantor a distance of 427.11 feet to a point;

Thence N47°28′21″W across land of the grantor a distance of 836.58 feet more or less to the point by beginning;

Said parcel contains 10.2 acres more or less.

WHEREAS, pursuant to the Natural Resources Protection Act, Title 38 M.R.S.A. Section 480-A et seq. and Chapter 310 of regulations promulgated by the Maine Department of Environmental Protection (the "Wetland Protection Rules"), Declarant has agreed, in satisfaction of paragraph C of the Order, to impose certain covenants and restrictions on the Covenant Area as more particularly set forth herein and has agreed that such covenants and agreements may be enforced by the Maine Department of Environmental Protection (hereinafter the "MDEP") or any successor in interest.

NOW, THEREFORE, the Declarant hereby declares that the Covenant Area is and shall forever be held, transferred, sold, conveyed, occupied and maintained subject to the covenants, conditions and restrictions set forth herein (sometimes referred to as the "Covenants and Restrictions"). The Covenants and Restrictions shall run with the Covenant Area and shall be binding on all parties having any right, title and interest in and to the Covenant Area, or any portion thereof, and their heirs, personal representatives, successors, and assigns. Any present or future owner or occupant of the Covenant Area or any portion thereof, by the acceptance of a deed of conveyance of all or part of the Covenant Area or an instrument conveying any interest therein, whether or not the deed or instrument shall so express, shall be deemed to have accepted the Covenant Area subject to the Covenants and Restrictions and shall agree to be bound by, to comply with and to be subject to each and every one of the Covenants and Restrictions hereinafter set forth.

1. Restrictions on Covenant Area. Unless the owner of the Covenant Area, or its successors or assigns, obtains the prior written approval of the MDEP, (or any successor thereof), the Covenant Area shall remain undeveloped in perpetuity.

   a. no soil, loam, peat, sand, gravel, concrete, rock or other mineral substance, refuse, trash, vehicle bodies or parts, rubbish, debris, junk waste, pollutants or other fill material will be placed, stored or dumped on the Covenant Area and the surface waters contained thereon, nor shall the topography of the area be altered or manipulated in any way;
b. no trees, grasses, shrubs, vines, or other vegetation shall be cut, destroyed, or sprayed with biocides, except that de minimis flower picking shall be allowed, and clearing will be allowed for the maintenance of any path or trail, and dead wood which is leaning or fallen may be removed;

c. no ditches shall be dug, and no draining of the Covenant Area, other than natural drainage in existence on the date of this Declaration, shall take place shall take place, and no pumping or any other removal of water shall occur on the Covenant Area, nor shall the manipulation or alteration of natural water courses or hydrology occur;

d. no building, sign, fence, utility pole, or other temporary or permanent structure will be constructed, placed or permitted to remain on the Covenant Area;

e. no trucks, cars, dirt bikes, ATVs, bulldozers, backhoes, or other motorized vehicles or mechanical equipment shall be permitted on the Covenant Area; and

Any activity on or use of the Covenant Area inconsistent with the purpose of these Covenants and Restrictions is prohibited. Prior to undertaking any changes in the use of the Covenant Area, the Declarant, its successors and assigns, shall consult with the MDEP regarding the proposed changes to determine the effect of such changes on the conservation values of the Covenant Area. The MDEP shall have the right to approve such changes in use if such uses do not impair or impede the conservation values of the Covenant Area or the purpose of the Covenants and Restrictions.

2. **Enforcement.** The MDEP may enforce any of the Covenants and Restrictions set forth in Section 1 above. Any future alterations of the Covenant Area must receive the prior approval in writing from the MDEP.

3. **Binding Effect.** The restrictions set forth herein shall be binding on any present or future owner of the Covenant Area. If the Covenant Area is at any time owned by more than one owner, each owner shall be bound by the foregoing restrictions but only to the extent that any of the Covenant Area is included within such owner's property.

4. **Amendment.** Any provision contained in this Declaration may be amended or revoked only by the recording of a written instrument or instruments specifying the amendment or the revocation signed by the owner or owners of the Covenant Area and by the MDEP (or any successor thereto).

5. **Effective Provisions of Declaration.** Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, shall be deemed a covenant running with the land as a burden and upon the title to the Covenant Area.

6. **Severability.** Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity of enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.
7. **Governing Law.** This contract shall be governed by, construed and interpreted in accordance with the laws of the State of Maine, excluding any choice of law rule that may direct the application of the laws of any other jurisdiction.

**TOWN OF CUMBERLAND**

BY: William R. Shane  
ITS: Town Manager

**STATE OF MAINE**  
Cumberland County, ss.  


Personally appeared before me the above named William R. Shane, Town Manager, Town of Cumberland, Maine, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Town of Cumberland, Maine.

___________________________  
Notary Public
ITEM 07-131

To authorize Town Manager to accept bid proposals for a maintenance building, shelter and athletic field improvements at Twin Brook
Public Hearing
November 26, 2007

Sewer Issues
& Managers Recommendations

(Click on an item number below to navigate to the item.)

1. Managers Report to the Town Council
2. Sewer Ordinance
3. Sewer Maps
ITEM
07-132

To hear a report from Town Manager and set a Public Hearing date (November 12th and/or 26th) re: changes to sewer ordinance (ready to serve fees and connection fees)
BACKGROUND

The Cumberland sewer system was originally designed to mitigate the increasing number of failing septic systems located along the Foreside and in Cumberland Center.

Sewer lines were carefully planned where soil conditions could not adequately treat subsurface wastewater disposal system. A review of the sewer system map will show how pockets of type “A” soils (gravel/sand) were skipped when planning the sewer system.

In 1981, the Town purchased 30% of the Falmouth treatment plant capacity to handle the sewer system. The capacity equals 468,000 gallons per day of wastewater. The Town also purchased capacity in the force mains, pump stations, and interceptor lines to ensure that the wastewater flow from Cumberland would not exceed the Falmouth infrastructure capacity.

PROBLEMS ALONG THE WAY

The Town had approximately 40% of unused sewer capacity in the late 1990’s. Most developers were aware that the system was limited and began purchasing “sewer units” for $2,000 each to keep for speculative development. The units were sold without a “ready to serve” component, and as the system was built-out and new maintenance demands and costs were incurred, the existing users paid the burden of the new costs, not the “unit holders”. In 2003, the Town Council changed the sewer ordinance to require all permit holders to immediately begin paying “ready to serve” fees. The “ready to serve” fees insured the permit holder of a future place in the system. During the 1990’s and early 2000’s, very few sewer increases were imposed. Monies collected from “future sewer units” would be used to offset any deficits in the operating fund. In 2003, the surplus funds were gone and the system was barely paying for itself. Monies had not been budgeted for capital repairs and system maintenance began to suffer as the system aged in the early 2000’s.
HITTING THE WALL

In 2003, MDEP announced that Falmouth would be forced to upgrade its treatment plant at a cost of 7 – 8 million dollars, 30% of this cost is the responsibility of Cumberland. The resulting bond increased Cumberland’s annual costs by 66% in a 2-year period. The “easy” math for comparison purposes is estimating 1,000 equivalent users and dividing into the annual costs.

For example:

2004 costs: $543,564 / 1,000 = $545/year

2008 costs: $806,777 / 1,000 = $807/year

Cumberland’s system is nearly built-out and will now affect the users of the system in an adverse and directly proportional way. $1,000 of cost increase equals $1 of sewer bill increase. With a 4% annual increase in costs expected ($32,000/year) the average sewer used could expect to see a $32/year increase for the foreseeable future.

Calculating a Monthly Sewer Bill:

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
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<tbody>
<tr>
<td>Base</td>
<td>$22.58</td>
<td>$23.00</td>
<td>$24.00</td>
<td>$25.00</td>
<td>$26.50</td>
<td>$28.00</td>
</tr>
<tr>
<td>Consumption</td>
<td>$1.63</td>
<td>$2.50</td>
<td>$3.30</td>
<td>$4.20</td>
<td>$4.50</td>
<td>$4.80</td>
</tr>
</tbody>
</table>

A sewer bill is comprised of 2 components the base bill + the consumption. Everyone pays the “Base” cost. For Calendar year 2007 the base cost equals $26.50. The consumption fees are how many 100HCF units a customer uses in one month. The average for Cumberland is 6.5. The Average Cumberland user would pay for consumption 6.5 units x $4.50 or $29.25 per month.

Total Bill for Average User: $26.50 + 29.25 = $55.75 per month

My family average nearly 14 units per month (no sub-meter lots of flower gardens) $26.50 + ($4.50 x 14 = $63) = $89.50 per month

As consumption decreases, base fees must increase to offset shortfall in revenues.
PROPOSED SHORT TERM PLAN

- Enforce mandatory “ready to serve” fees.

- Offer “Amnesty Plans” for all current unconnected users to hook into system. This may result in $30,000 to $100,000 of additional revenues. It is now estimated 100 +/- homes are not paying “ready to serve” fees.

- Re-check all sewer user accounts to ensure proper number of units are being billed to each owner, including Town and Schools.

LONG TERM PLAN

Consider funding some of the system costs through the tax base. For example, pump station costs and system maintenance will grow to 250,000 +/- in total. If the system expense were paid ($160,000), each user would see a $160 annual savings. It could easily be argued that the environmental benefits from the system can be compared to the public safety benefits of fire hydrants. Hydrants are paid for by the Town at a cost of $52,000 annually and growing with the expansion into West Cumberland. All taxpayers are paying for this resource, regardless if they are served by public water.

The alternative option would be to place the entire system under the Town similar to Yarmouth, but the financial impacts and equity would need to be fully evaluated. Because of the trade-off and new programs that would need to be added (free septic tank pumping and subsidized septic system replacement), I believe that most taxpayers would be negatively impacted under a change of funding.

CONCLUSION

The Town Council needs to take no action related to the “ready to serve” fees; staff will aggressively enforce the ordinance. The Council will need to adopt the connection amnesty or reduced fee program, which should go simultaneously with the “ready to serve” fee implementation.

The long-term viability of the sewer system should be discussed during budget deliberation, and evaluated annually.

The 3-step Approach

1) Enforcement of “ready to serve” fees
2) Implementation of amnesty program
3) Evaluating environmental value of system maintenance contribution.

This approach will curb the escalation of costs and sustain the present viability of our sewer infrastructure.
Monthly Sewer Costs
To Avg. Homeowner

- 7 HCF Per month or 175 gpd
- 9 HCF Per month or 225 gpd
- 11 HCF per month or 275 gpd
Annual Consumption 1 unit = 100 cf of water or 748 gallons
Avg usage in Cumberland 175 gallons per day
(decrease of 75 gallons per day since 2004)
TOWN OF CUMBERLAND
SEWER USE ORDINANCE
TOWN OF CUMBERLAND
SEWER USE ORDINANCE

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TOWN OF CUMBERLAND

SEWER USE ORDINANCE

An ordinance regulating the use of public and private sewers and drains, private wastewater disposal, the installation and connection of building sewers, and the discharge of waters and wastes in the public sewer system, and providing penalties for violations thereof; in the Town of Cumberland, County of Cumberland, State of Maine.

Be it ordained and enacted by the Council of the Town of Cumberland, State of Maine as follows:

ARTICLE I. PURPOSE

It shall be the purpose of this ordinance to reduce, to the extent practicable, existing pollution and to prevent further pollution caused by the inadequate wastewater disposal, and to accomplish the necessary local legislation to meet the requirements of the Portland Regional Wastewater Plan established by the Portland Water District, the State of Maine and the Federal Government. All this is in furtherance of the health, welfare, comfort and convenience of the inhabitants of the Town of Cumberland.

Whereas the Portland Water District has been designated as the regional agency responsible for Wastewater Treatment, none of the provisions of this ordinance shall be construed to repeal or otherwise interfere with the rights, duties, and/or powers granted to the Portland Water District pursuant to Chapter 433 of the private and special laws of the State of Maine of 1907, as amended.

ARTICLE II. SCOPE

Hereafter any person owning a building or structure within the Town of Cumberland which is the source of sewage and/or industrial wastes or who proposes to erect such building or structure shall conform to the requirements of the State Plumbing Code, this ordinance and any regulations thereunder. Outside consulting fees shall be charged in accordance with Section 608 of the zoning ordinance (Amended, effective 3-25-87).
ARTICLE III. DEFINITIONS

Unless the context specifically indicates otherwise, the meaning of terms used in this ordinance shall be as follows:

Sec. 1 "Abutter" shall be defined as a parcel of land whose boundary closest to the sewer line, if extended across the street right of way, would cross the public sewer.

Sec. 2 "Biochemical oxygen demand (BOD)" shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20°C, expressed in milligrams per liter.

Sec. 3 "Board of Sewer Appeals" shall mean that board appointed according to provision of Article XI.

Sec. 4 "Building drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning eight (8) feet (2.5 meters) outside the inner face of the building wall.

Sec. 5 "Building sewer" shall mean the extension from the building drain to the public sewer or other place of disposal, also called house connection.

Sec. 6 "Combined sewer" shall mean a sewer intended to receive both wastewater and storm or surface water.

Sec. 7 "Easement" shall mean an acquired legal right for specific use of land owned by others.

Sec. 8 "Floatable oil" is oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the collection system.

Sec. 9 "Force main" shall mean a pressurized section of sewer that conveys the discharge from a pump station to a higher level destination which may be a treatment plant or a manhole in the gravity portion of the sewerage system.

Sec. 10 "Garbage" shall mean the animal and vegetable waste resulting from the handling, preparation, cooking, and serving of foods.
Sec. 11 "Industrial wastes" shall mean the wastewater from industrial process, trade or business as distinct from sanitary wastes.

Sec. 12 "Natural outlet" shall mean any outlet, including storm sewers into a watercourse, pond, ditch, lake or other body of surface or groundwater.

Sec. 13 "May" is permissive (see "shall", Sec. 23)

Sec. 14 "person" shall mean any individual, firm, association, society, corporation or group.

Sec. 15 "pH" shall mean the logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen-ions, in grams, per liter of solution: neutral water, for example, as a pH value of 7 and a hydrogen-ion concentration of 10^-7.

Sec. 16 "Plumbing Inspector" shall mean the plumbing inspector of the Town of Cumberland, as defined by Title 30, Section 3222, of the State Plumbing Code.

Sec. 17 "Properly shredded garbage" shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the slow conditions normally prevailing in public sewers, with no particles greater than 1/2 inch (1.27 centimeters) in any dimension.

Sec. 18 "Public sewer" shall mean a common sewer controlled by a governmental agency or public utility.

Sec. 19 "Sanitary sewer" shall mean a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants, institutions and other buildings, together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

Sec. 20 "Sanitary wastes" shall mean the liquid wastes and liquid borne wastes discharged from the sanitary conveniences such as toilets, washrooms, urinals, sinks, showers, drinking fountains, home laundry rooms and kitchens and be essentially free of industrial wastes or toxic materials.

Sec. 21 "Sewage" is the spent water of a community. The preferred term is "wastewater," Sec. 31.

Sec. 22 "Sewer" shall mean a pipe or conduit that carries wastewater or drainage water.
Sec. 23 "Shall" is mandatory (see "may", Sec. 13).

Sec. 24 "Slug" shall mean any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes or more than five (5) times the average twenty-four hour concentration of flows during normal operation and shall adversely affect the collection system and/or performance of wastewater treatment works.

Sec. 25 "Storm drain" (Sometimes termed "Storm sewer") shall mean a drain or sewer for conveying water, groundwater, sub-surface water, or unpolluted water from any source.

Sec. 26 "Superintendent" shall mean the official directly in charge of the Cumberland sewer system as designated by the Town Council, or the superintendent's authorized deputy, agent or representative.

Sec. 27 "Suspended solids" shall mean the total suspended matter that either floats on the surface of, or is in suspension in, water, wastewater, or other liquids, and that is removable by laboratory filtrating as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as nonfilterable residue.

Sec. 28 "Unpolluted water" is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

Sec. 29 "Town" shall mean the Town of Cumberland, Maine.

Sec. 30 "Town Council" shall mean the duly elected Town Council of the Town of Cumberland.

Sec. 31 "Wastewater" shall mean the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, institutions and any other buildings, together with any groundwater, surface water, and stormwater that may be present.

Sec. 32 "Wastewater facilities" shall mean the structures, equipment and processes required to collect, carry away, and treat sanitary and industrial wastes and dispose of the effluent.

Sec. 33 "Wastewater treatment works" shall mean an arrangement of devices and structures for treating wastewater,
industrial wastes, and sludge. Sometimes used as synonymous with "waste treatment plant" or "wastewater treatment plant" or "water pollution control plant."

Sec. 34 "Watercourse" shall mean a natural or artificial channel for the passage of water either continuously or intermittently.

**ARTICLE IV. USE OF PUBLIC SEWERS REQUIRED**

Sec. 1 It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the Town of Cumberland or in any area under the jurisdiction of said Town, any human or animal excrement, garbage or objectionable waste. The term "unsanitary manner" shall not include seasonal spreading of animal excrement or other fertilizer in farming or animal husbandry operations.

Sec. 2 It shall be unlawful to discharge to any natural outlet within the Town of Cumberland, or any area under the jurisdiction of said Town, any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance.

Sec. 3 Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.

Sec. 4 The owner of any house, building or other structure used for human occupancy, employment, recreation or other purposes requiring the disposal of wastewater, abutting and situated within 200 feet of any sanitary sewer, excluding any force main leading to a wastewater treatment plant, shall at the owner's own expense connect its wastewater facilities directly with the proper public sanitary sewer in accordance with the provisions of this ordinance within 90 days after the date of notice by the superintendent to do so. The 200-foot measurement shall be made by a straight line from the end of any stub provided by the Town, otherwise from any gravity portion of the public sewer, to a point on the building other than the foundation for any garage or other attached accessory building unless it contains a toilet or sink, or contains other facilities regularly generating sewage.

If the owner can provide to the satisfaction of the superintendent that a suitable private wastewater
disposal is currently in use, the owner shall be exempt from connecting to the public sewer, but shall be assessed a readiness to serve fee equal to the minimum charge as established if a connection were made.

ARTICLE V. PRIVATE WASTEWATER DISPOSAL

Sec. 1 The owner of any house, building or other structure who is not required to connect its wastewater facilities to a public sanitary sewer in accordance with the provisions of Article IV, Section 4 hereof, shall connect the building sewer to a private wastewater disposal system complying with the provisions of this Article and the State of Maine Subsurface Wastewater Disposal Rules, Chapter 241.

Sec. 2 Before commencement of construction of a private wastewater disposal system the owner(s) shall first obtain a written permit signed by the licensed plumbing inspector. The application for such permit shall be made on a form furnished by the Division of Health Engineering, Maine Department of Human Services, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the plumbing inspector. A permit and inspection fee shall be paid to the plumbing inspector at the time the application is filed.

Sec. 3 A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the licensed plumbing inspector. The licensed plumbing inspector shall be allowed to inspect the work at any stage of construction, and in any event, the applicant for the permit shall notify the licensed plumbing inspector when the work is ready for final inspection, and before any underground portions are covered. The final inspection shall be made by the end of the second succeeding business day after the date of actual receipt of notice by the licensed plumbing inspector, or the installation shall be considered approved unless the inspector gives notice of a delay in the inspection within the two days, in which case the inspector shall schedule inspection within 48 hours of said notice.

Sec. 4 The type, capacities, location and layout of a private wastewater disposal system shall comply with the State of Maine Subsurface Disposal Rules, Chapter 241 and the Building Code of the Town.
Sec. 5 The owner(s) shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the Town.

Sec. 6 No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the Town Health Officer.

Sec. 7 The contents from private wastewater disposal systems shall not be discharged to the public sewer system.

ARTICLE VI. BUILDING SEWERS AND CONNECTIONS

Sec. 1 No person(s) shall commence construction of building sewers, uncover, or make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the superintendent which permit shall be valid for six (6) months.

Any person proposing a new discharge of industrial waste into the system or a substantial change in the volume or character of pollutants that are being discharged into the system shall notify the Superintendent at least forty-five (45) days prior to the proposed change or connection, and shall comply with the Maine Revised Statutes Annotated, Title 38, Chapter 3, Subchapter I, Sec. 361.

Sec. 2 There shall be two (2) classes of sewer permits: (a) for service to establishments producing sanitary wastes; and (b) for service to establishments producing industrial wastes. In either case, the owner(s), or his agent, shall make application on a special form furnished by the Town. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the superintendent. A permit and inspection fee in such amounts as shall from time to time be established by the Town Council shall be paid to the Town at the time the application for a permit is filed. Any violation of Section 1 shall require the applicant to pay a double permit and inspection fee.

Sec. 3 All costs and expenses incidental to the installation, connection, repair and maintenance of the building sewer from the wall of the building to the point of entrance to the public sewer shall be borne by the owner(s). The owner(s) shall indemnify the Town from any loss or damage that may directly or indirectly be occasioned by the installation or maintenance of the building sewer.
If a public sewer connection is not presently available, the Town or its agents will install the tee connection to the public sewer at the applicant’s expense.

Sec. 4 A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no building sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the front building sewer may be extended to the rear building by arrangement of the owners and the whole considered as one building sewer, but the Town does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.

Sec. 5 Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent, to meet all requirements of this ordinance.

Sec. 6 The building sewer shall meet one of the following specifications: 1) Ringtite PVC Sewer SDR 35 – ASTM-D-3034 12 1/2 foot or 20 foot lengths, rubber ring lock-in, maximum allowable deflection 7 1/2 percent, 2) Ringtite PVC Water Pipe Class 160, SDR-26, 20 foot lengths ASTM-D-2241, rubber ring in belled groove, maximum allowable deflection 7 1/2 percent, 3) ABS sewer pipe ASTM D2751 sewer grade, 4) Extra heavy cast iron soil pipe shall conform to American Society for Testing and Materials specification (ASTM) A74 and American Standard Association specification (ASA) 40.1, or 5) Ductile iron push or joint sewer pipe of Class 50.

The diameter of the building sewer shall not be less than four (4) inches nor shall the slope of the pipe beginning 8 feet outside any building be less than one-quarter (1/4) inch per foot, unless approved by the superintendent.

The depth of building sewers shall be sufficient to afford protection from frost. Any part of building sewer lines installed with less than three (3) feet ground cover shall be insulated as approved by the superintendent.

The building sewer shall be laid at uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with properly curved pipe and fittings. The ends of building sewers which are not connected to the building drain of the structure for any reason, shall be sealed against infiltration by a suitable stopper, plug, or other approved means. The
building sewer shall be laid on a firm bed and backfilled by hand with sand, gravel or clean fill with no stones larger than 1 1/2". The hand fill shall be placed around the pipe and over it to a depth of at least 6" over the pipe. The remainder of the trench may be backfilled by machine. Backfill up to 6" over the pipe shall be hand tamped.

All excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the superintendent. Pipe laying and backfill shall be performed in accordance with Sections 3 through 6 of ASTM Specification C12, except that no backfill shall be placed until the work has been inspected and except that trench width measured at the top of the installed pipe shall not exceed thirty-six (36) inches.

All joints and connections shall be made gas tight and water tight. The transition joint between pipes of different materials shall be made with adaptors and joint materials approved by the superintendent.

Premolded gasket joints shall be used and shall be neoprene compression type gaskets which provides a positive double seal in the assembled joint. The gasket shall be a premolded, one piece unit designed for joining the pipe material used. The assembled joint shall be sealed by compression of the gasket between the exterior surface of the spigot and the interior surface of the hub. The joint shall be assembled following the manufacturer's recommendation using acceptable lubricant and special pipe coupling tools designed for that purpose. Lubricant shall be a blend, flax base, non-toxic material, and shall not chemically attack the gasket material.

Lead and oakum joints and solvent weld joints are allowed as an alternate, but only when installed by licensed master plumbers.

Building sewer cleanouts shall be installed at intervals not to exceed 110' in straight lines and at all 90 degree turns. The cleanouts shall be installed vertically to within 6" of the surface. A stainless steel strap shall be installed around the cleanout.

Any replacing or relocating of building drain pipes inside the building shall require a separate permit to be taken out by either a master plumber or the owner.
Sec. 7 Whenever practical, the building sewer pipes shall be brought to the building drain at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, wastewater carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

A septic tank in good condition as defined by the superintendent may be used for a pumping tank. The outlet to the disposal area shall be disconnected and plugged.

The sewage pump shall be capable of pumping solids and shall have at least a 2" discharge line. If a grinder pump is installed, a 1 1/2" discharge line is permitted. Tanks shall be equipped with an alarm system wired to the building.

Sec. 8 No person(s) shall make a connection of roof downspouts, floor drains, foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

Sec. 9 The applicant for the building sewer permit shall notify the superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the superintendent. If the trench is backfilled before being authorized by the superintendent, the superintendent shall require it to be re-excavated for inspection. The superintendent shall make all inspections without undue delay.

Sec. 10 Upon completion of the connection of the building sewer to the public sewer, the old septic tank shall be pumped out and filled with soil, or removed.

Sec. 11 All excavations for building sewer installation or maintenance shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Town.

Sec. 12 No connection of a building sewer shall be made directly to a force main.
ARTICLE VII. SEWER EXTENSIONS

Sec. 1 Any person who subdivides land within the Town, of which any part either is located within 500 feet of a public sanitary sewer, or is so located that it can be connected to such public sanitary sewer without undue hardship, as determined by the Planning Board, shall, if such subdivision has not been finally approved before the effective date of this ordinance, at the subdivider's own expense construct for dedication to the Town a sanitary sewer extension to serve all structures within such subdivision which will require the disposal of sewage. Such sanitary sewer shall be designed by a registered engineer, its design shall be approved by the Town and its design, construction and acceptance shall be in accordance with the provisions of Article VII, Sections 3, 4, and 5.

Sec. 2 Any one or more property owners, builders or developers may propose the extension of any sanitary sewer within the Town by presenting to the Town Council a petition signed by the owners of at least two-thirds of the buildings and properties which would be required to connect to such sewer or be assessed a readiness to serve charge under the provisions of Article IV, Sec. 4. If the Council does not elect that the Town construct such an extension, it may permit the petitioners to construct the same for dedication to the Town upon a determination that such extension is consistent with Town plans for public sewers, is properly located and sized, and may lawfully be so constructed. Such sanitary sewer shall be designed by a registered engineer, its design and acceptance shall be in accordance with the provisions of Article VII, Sec. 3, 4 and 5. Any sewer extension shall be of adequate size and depth to permit further extensions of sewer service.

Sec. 3 The Town Council may, on its own initiative, determine to extend the public sewer down an unsewered public way within the Town if it determines that such an extension would be in the best interest of the health and welfare of the abutting property owners along said way. When such extensions are made by Council Order, the cost of the construction of the actual extension will be borne by the Town. However, all abutting land owners who are discharging septic waste shall be required to connect to said sewer at such times as their existing septic system fails or when any new or replacement system is proposed for existing dwellings or as part of the development of vacant land adjoining said sewer extension. The Town Council shall, by Order, establish an access charge
equal to a reasonable reimbursement to the Town for its
cost in extending said sewer. Said Order shall be
specific to each new sewer extension and shall be
attached to this ordinance as a schedule of charges. No
readiness to serve charge shall be made on said
municipal sewer extensions. No other costs shall be
assessed against the property owners except said access
charge, permit fees and installation costs, when the
property becomes served by the sewer directly and
thereafter property owners shall pay all normal charges
assessed to users within this ordinance. Any such sewer
extensions approved by the Town Council shall comply
with the design standards adopted by the Town for all
other sewer extensions and may be constructed of
adequate size and depth to permit further extensions
therefrom.

Sec. 4

Any person constructing a sanitary sewer extension in
accordance with Article VII, Sec. 1 and 2, shall pay for
the entire installation, including all expenses
incidental thereto including design review by the Town
Engineer; the expense of design review by the Town
Engineer shall be calculated on the basis of the number
of hours spent by the Town Engineer in review of the
design times the hourly rate of $40.00, and all expenses
shall be paid to the Town prior to construction of the
sanitary sewer extension. Each building sewer must be
installed and inspected as required by Article IV and
all connections shall be made as required under Article
IV; permit and inspection fees shall be paid for each
building sewer connection to the sanitary sewer
extension in accordance with Article VI. The
installation of the sewer extension must be subject to
periodic inspection by the superintendent and the
expenses for this inspection shall be paid for by the
owner, builder or developer. The superintendent's
decision shall be final in matters of quality and
methods of construction. The sewer, as constructed, must
pass the testing required in the sewer design
specification as adopted by the Town before it is to be
used. The cost of sewer extension thus made shall be
absorbed by the developers or the property owners,
including all building sewers.

The Town may require the developer to pay the cost of
inspector services as may be required by the Town, up to
and including a full time inspector.

Outside review fee: The applicant shall be required to
pay outside consulting fees under Section 508 of the
Zoning Ordinance, as may be amended.
Sec. 5 Sewer and pump station design shall be in accordance with the sewer design specifications adopted by the Town. Pump station telemetry shall be in accordance with the requirements of the Portland Water District. The Portland Water District shall approve, prior to installation, all necessary instrumentation for all pump stations. All pump stations with an installed design capacity greater than 150 gallons per minute shall be designed and constructed by the Portland Water District, with the developer or the property owners requiring the pump station paying all of its costs.

Sec. 6 The town engineer shall approve any sanitary sewer extension constructed under Article VII, Sec. 1 and 2, and he shall be given a complete plan and profile thereof as constructed, before acceptance thereof, and before final acceptance of the subdivision street in which it is located, by the Town. Any person constructing a sanitary sewer extension in accordance with Article VII, Sec. 1 and 2, shall pay prior to Town acceptance of the sanitary sewer extension, all expenses incidental to the Town Engineer's review and approval of the constructed sanitary sewer extension, which expense shall include but shall not be limited to the cost of the Town Engineer's review and approval, which cost shall be calculated on the basis of the number of hours spent by the Town Engineer on said review and approval times the hourly rate of $40.00. All sewer extension, including pump stations, constructed at the property owner's, builder's or developer's expense, after final approval and acceptance by the Superintendent, shall become the property of the Town and shall thereafter be maintained by the Town within a time period of 6 months if accepted. Said sewers or pump stations, after their acceptance by the Town, shall be guaranteed by the property owner, builder or developer against defects in materials or workmanship for twelve (12) months. The guarantee shall be in the form of a maintenance guarantee bond in an amount not less than 10 percent of the engineer's estimate of the cost of the sewer extension or pump station.

Sec. 7 No building or developer shall be issued a building permit for a new building or structure requiring sanitary facilities within the Town, unless a suitable and approved method of sewage disposal is proposed and approved by the Town.
ARTICLE VIII. USE OF THE PUBLIC SEwers

Sec. 1 No person(s) shall discharge or cause to be discharged any unpolluted waters such as stormwater, groundwater, roof runoff, subsurface drainage, or cooling water to any sanitary sewer. Combined sewers are expressly prohibited.

Sec. 2 Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers or to be a natural outlet approved by the superintendent and other regulatory agencies. Industrial cooling water or unpolluted process waters may be discharged, on approval of the superintendent, to a storm sewer, or natural outlet and the discharge shall comply with Maine Revised Statutes Annotated Title 30, Chapter 3, Section 413.

Sec. 3 No person(s) shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

(a) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas.

(b) Any waters containing toxic or poisonous solids, liquids, or gasses.

(c) Any waters or wastes having a pH lower than 6.0 or higher than 9.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the wastewater works.

(d) Solid or viscous substances in quantities of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater facilities such as, but not limited to, ashes, bones, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.

Sec. 4 The following described substances, materials, waters, or waste shall be limited in discharges to municipal systems to concentrations or quantities which will not harm either the sewer's wastewater treatment process or equipment, will not have an adverse effect on the receiving stream, or will not otherwise endanger lives, limb, public property, or constitute a nuisance. The superintendent may set limitations lower than the
limitations established in the regulations below if, in
the superintendent's opinion, such more severe
limitations are necessary to meet the above objectives.
In forming his opinion as to the acceptability, the
superintendent will give consideration to such factors
as the quality of subject waste in relations to flows
and velocities in the sewers, materials of construction
of the sewers, the wastewater treatment process
employed, capacity of the wastewater treatment plant,
and other pertinent factors. The limitations or
restrictions on materials or characteristics of waste or
wastewater discharged to the sanitary sewer which shall
not be violated without approval of the superintendent
are as follows:

(a) Wastewater having a temperature higher than 150
degrees Fahrenheit (65 degrees Celsius).

(b) Wastewater containing more than 25 milligrams per
liter of petroleum oil, non biodegradable cutting oils,
or product of mineral oil origin.

(c) Wastewater from industrial plants containing
floatable oils, fat or grease.

(d) Any garbage that has not been properly shredded
(see Article III, Section 17). Garbage grinders may be
connected to sanitary sewers from homes, hotels,
institutions, restaurants, hospitals, catering
establishments, or similar places where garbage
originates from the preparation of food in kitchens for
the purpose of consumption on the premises or when
served by caterers. The installation and operation of
any garbage grinder in a non-residential establishment
shall be subject to the review and approval of the
superintendent.

(e) Any waters or wastes containing a toxic or
poisonous substance, a high chlorine demand or suspended
solids in sufficient quantity to injure or interfere
with any sewage treatment process, constitute a hazard
to humans or animals or create any hazard in the
receiving waters or the effluent of Falmouth's
wastewater treatment plant. Such toxic substances shall
be limited to the average concentrations listed
hereinafter in the sewage as it arrives at the treatment
plant and at no time shall the hourly concentration at
the wastewater treatment plant exceed three times
average concentration.
Limits of Toxic Substances in Sewage at the Falmouth Treatment Plant

Iron, as Fe .................................. 1.0 ppm
Chromium, as Cr (hexavalent) .......... 0.5 ppm
Copper, as Cu ............................. 1.0 ppm
Phenol ........................................ 10.0 ppm
Cyanide, as CN .............................. 0.05 ppm
Cadmium, as Cd ............................ 0.01 ppm
Zinc, as Zn .................................. 0.5 ppm
Nickel .......................................... 0.75 ppm

If concentrations listed above are exceeded at the Falmouth Wastewater Treatment Plant, individual establishments will be subject to control by the Superintendent in volume and concentration of wastes discharged as follows:

<table>
<thead>
<tr>
<th>Metal</th>
<th>Maximum for any One Day</th>
<th>Monthly Average Shall Not Exceed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadmium</td>
<td>0.11</td>
<td>.07</td>
</tr>
<tr>
<td>Chromium Total</td>
<td>2.77</td>
<td>1.71</td>
</tr>
<tr>
<td>Copper</td>
<td>3.38</td>
<td>2.07</td>
</tr>
<tr>
<td>Lead</td>
<td>0.69</td>
<td>0.43</td>
</tr>
<tr>
<td>Nickel</td>
<td>3.98</td>
<td>2.38</td>
</tr>
<tr>
<td>Silver</td>
<td>0.43</td>
<td>0.24</td>
</tr>
<tr>
<td>Zinc</td>
<td>2.61</td>
<td>1.48</td>
</tr>
<tr>
<td>Cyanide</td>
<td>1.20</td>
<td>0.65</td>
</tr>
</tbody>
</table>

and any waters or wastewater containing arsenic or fluorides are prohibited from discharge to the sanitary sewer system.

(f) Any waters or wastes containing odor-producing substances exceeding limits which may be established by the superintendent.

(g) Any radioactive wastes or isotopes of such half-life or concentrations as may exceed limits established by the Superintendent in compliance with applicable state or federal regulations.

(h) Quantities of flow, concentrations, or both which constitute a "slug" as defined herein.

(i) Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed, or are amenable to treatment only to such a degree that the wastewater
treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over the discharge to the receiving waters.

(j) Any water or wastes which, by interaction with other water or wastes in the public sewer system, release noxious gases, form suspended solids which interfere with the collection system, or create a condition deleterious to structures and treatment processes.

(k) Sanitary wastewater which exceeds the following limits:

<table>
<thead>
<tr>
<th>Constituent</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>BOD</td>
<td>300 ppm</td>
</tr>
<tr>
<td>Suspended Solids</td>
<td>350 ppm</td>
</tr>
<tr>
<td>Chlorine Demand</td>
<td>15 ppm</td>
</tr>
</tbody>
</table>

Sec. 5

If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 4 of this Article, and which in the judgment of the Superintendent, may have a deleterious effect upon the wastewater facilities, processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Superintendent may:

(a) Reject the wastes,
(b) Require pretreatment to an acceptable condition for discharge to the public sewers,
(c) Require control over the quantities and rates of discharge and/or
(d) Require payment to cover added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Section 10 of this Article.

When considering the above alternatives, the Superintendent shall give consideration to the economic impact of each alternative on the discharger. If the Superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Superintendent.

Sec. 6

Grease, oil and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid wastes containing floatable oil in excessive amounts, as specified in Section 4(c), or any flammable wastes,
sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captured materials and shall maintain records of the dates, the means of disposal which are subject to review by the Superintendent. Any removal and hauling of the collected materials not performed by owner(s) personnel must be performed by currently licensed disposal firms.

Sec. 7 Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner(s) at his expense.

Sec. 8 When required by the Superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure, together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structure, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the Superintendent. The structure shall be maintained by the owner so as to be safe and accessible at all times.

Sec. 9 The Superintendent may require a user of sewer services to provide information needed to determine compliance with this ordinance. These requirements may include:

(a) Wastewater discharge peak rate and volume over a specified time period;
(b) Chemical analysis of wastewaters;
(c) Information on raw materials, processes, and products affecting wastewater volume and quality;
(d) Quantity and disposition of specific liquid, sludge, oil, solvent, or other materials important to sewer use control;
(e) A plot plan of the sewers of the user's property showing sewer and pretreatment facility location;
(f) Details of wastewater pretreatment facilities; and
(g) Details of systems to prevent and control the losses of materials through spills to the municipal sewer.

Sec. 10 All measurements, tests, and analysis of the characteristics of waters and wastes to which reference is made in this ordinance shall be determined in
accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association. Sampling methods, location, times, durations, and frequencies are to be determined on an individual basis subject to approval by the Superintendent.

(a) All industries discharging industrial waste into a public sewer shall perform such monitoring of their discharges as the Superintendent and/or other duly authorized employees of the town may reasonably require, including installation, use and maintenance of monitoring equipment, keeping records and reporting the results of such monitoring to the superintendent. Such records shall be made available upon request by the Superintendent to other agencies having jurisdiction over discharges to the receiving waters.

Sec. 11 No statement contained in this Article shall be construed as preventing any special agreement or arrangement between the Town and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Town for treatment.

ARTICLE IX.

Sec. 1 No person(s) shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is a part of the wastewater facilities. Any person(s) violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

Sec. 2 A contractor must present a certificate of insurance showing minimum liability coverage of $250,000/500,000 for bodily injury and a $100,000 limit for property damage including collapse underground and completed operations coverage with the Town listed as an additional insured before a permit will be issued for construction of building sewers or sewer extensions. Sewer extensions may require higher coverage if so recommended by the engineer.

ARTICLE X.  POWERS AND AUTHORITY OF INSPECTORS

Sec. 1 The Superintendent and other duly authorized employees or agents of the Town, bearing proper credentials and identification, shall be permitted to enter all
properties for the purpose of inspection, observation, measurement, sampling, and testing pertinent to discharge to the public sewer system in accordance with the provisions of this ordinance but only at reasonable times and upon reasonable notice.

Sec. 2 The Superintendent or other duly authorized employees or agents are authorized to obtain information concerning industrial processes which have a direct bearing on the kind and source of discharge to the wastewater collection system. Any information so obtained and considered as proprietary shall be deemed as confidential and shall be held so by the Superintendent and Town.

Sec. 3 While performing the necessary work on private properties referred to in Article X, Sections 1 and 2 above, the Superintendent or duly authorized employees or agents of the Town shall observe all safety rules applicable to the premises established by the owner, and the owner shall be held harmless for injury or death to the Town employees, and the Town shall indemnify the owner against loss or damage to its property by Town employees and against liability claims and demands for personal injury or property damage asserted against the owner and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the owner to maintain safe conditions.

Sec. 4 The Superintendent and other duly authorized employees or agents of the Town bearing proper credentials and identification shall be permitted to enter all private properties through which the Town holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

ARTICLE XI. BOARD OF SEWER APPEALS

Sec. 1 Creation and Appointment. The establishment of a Board of Sewer Appeals is hereby authorized. The members of the Board shall be appointed by the Town Council. They shall be residents of the Town and shall serve without compensation. In accordance with the laws of the State of Maine, the following provisions shall apply:
(a) The Board shall consist of five members. A quorum shall consist of three members.
(b) The term of office of members shall be three years except that the initial appointment of members shall be one for one, two for two, and two for three years.

(c) No municipal officer shall be a member of the Board of Sewer Appeals.

(d) The Town Council may remove a member of the Board of Sewer Appeals. Unexcused absence of any member from three consecutive meetings of the board shall be considered cause for such removal.

(e) When there is a permanent vacancy, whether caused by death, resignation, removal or loss of eligibility, the Town Council may appoint a person to serve for the unexpired term.

(f) The Board of Sewer Appeals shall elect a chairman and a secretary from its own membership annually.

Sec. 2

Jurisdiction. The Board of Sewer Appeals shall have the following powers and duties to be exercised only upon written appeal by a party aggrieved by a decision of the Superintendent, Town Engineer, the Health Officer, and/or the Plumbing Inspector insofar as such decision arises from requirements of this ordinance.

(a) To determine whether the decisions of said officers are in conformity with the provisions of this ordinance, and to interpret the meaning of this ordinance in cases of uncertainty.

(b) To grant variances from the terms of this ordinance where there is no substantial departure from the intent of the ordinance and/or, where necessary, to avoid undue hardship. A projected expenditure of an amount exceeding 15 percent of the assessed value of the buildings on the land to be served by the public sewer shall be considered as a prima facie evidence of undue hardship.

Sec. 3

Hearings. The Board of Sewer Appeals shall annually determine a regular monthly meeting date. All appeals or other matters to come before the Board, requiring a notice as prescribed herein, shall be filed with the Town Clerk at least fifteen days prior to said next monthly meeting day who shall cause to be advertised in a newspaper of general circulation in the Town of Cumberland a notice of such appeal identifying the property involved, the nature of the appeal and stating the time and place of a public hearing of such appeal which shall not be earlier than ten (10) days after the date of such publications.

The Board of Sewer Appeals shall not continue hearings on an appeal to a future date except for good cause.
Written notice of the decision of the Board shall be sent to the appellant and to the officer concerned, forthwith. Failure of the Board to issue such a notice within 30 days of the date of the hearing shall constitute a denial of said appeal.

Sec. 4 Appeal Procedure.

(a) Any person and any municipal department aggrieved by the decision of the Superintendent, the Town Health Officer and/or the Plumbing Inspector, which decision arises from provisions of this ordinance, may appeal such decision to the Board of Sewer Appeals.

(b) Within 30 days of the date of the decisions of the Superintendent, Health Officer, and/or Plumbing Inspector, the appeal shall be entered at the office of the Town Clerk upon forms to be approved by the Board of Appeals. The appellant shall set forth in said form the grounds of the appeal and shall refer to the specific provisions of the Sewerage Ordinance involved. Following the receipt of any appeal, the Town Clerk shall notify forthwith the officer concerned and the Chairman of the Board of Sewer Appeals. The appellant shall pay to the Town Treasurer a fee as set by the Town Council.

(c) An aggrieved party may appeal from the decision of the Board of Sewer Appeals to the Superior Court as provided by the laws of the State of Maine.

Sec. 5 Successive Appeals. After a decision has been made by the board of Sewer Appeals, a new appeal of similar import shall not be entertained by the Board until one year shall have elapsed from the date of said decision, except that the Board may entertain a new appeal if the Chairman believes that, owing to a mistake of law or misunderstanding of fact, an injustice was done, or if he believes that a change has taken place in some essential aspect of the appeal.

ARTICLE XII. SEWER SERVICE CHARGES

Sec. 1 Sewer service charges totaling 100 percent of the revenues needed for retiring debt services, capital expenditures, operation and maintenance of the public sewerage works shall be collected from all users of the public sewer system and those required to pay a readiness to serve charge as defined in Article 4, Section 4.
Sec. 2  Sewer Service Charge rates, including readiness to serve charges, shall be determined by the Town Council. This charge will be billed on a monthly or quarterly basis throughout each calendar year.

Sec. 3  The Sewer Service Charge to any user shall be based on the amount of water estimated or measured as shown on the records of the Portland Water District, provided to the sewer user during the previous billing period; provided, however, that where water is obtained from a source or sources other than the Portland Water District, whether or not Portland Water District also supplies water, the computation shall include the amount of water obtained from all such other sources, unless the user establishes to the satisfaction of the Superintendent that the water from such other sources is not entering the sewer system. The Superintendent may require additional metering, either of water sources or of the sewer outflow, to be installed and maintained at the owner's expense where, in the Superintendent's opinion, such metering is required to accurately measure the volume of wastewater entering the sewer system.

Any person who feels that recorded water records are not a reliable index of the discharge volume may install an additional water meter of a type approved by the Superintendent to measure the volume of water which can be shown not to enter the sewerage system. The person installing such a meter shall immediately notify the Superintendent of such installation and shall be responsible to the Superintendent for reporting meter readings not less often than every three months. Such person shall be credited with the volume charges for the volume shown by such meter, which meter shall be accessible for reading by the Town or its agents at all reasonable times.

Sec. 4  There shall be a readiness to serve charge equal to the minimum sewer service charge for those properties that can be served as defined in Art. IV, Sec. 4, but that have not connected to the public sewer system. The payment of such charge in no way affects the obligation of the owner of such property to connect to the public sewer system in conformance with the Ordinance. These funds can be used only for payment of fixed costs that are not related to flow.

Sec. 5  Each sewer user shall pay a minimum sewer service charge for fixed costs not related to flow regardless of actual water usage.
Sewer Use Ordinance - Draft Updates

December 22, 2003

Changes Summarized
Sec. 2 Any one or more property owners, builders or developers may propose the extension of any sanitary sewer within the Town by presenting to the Town Council a petition signed by the owners of at least two-thirds of the buildings and properties which would be required to connect to such sewer or be assessed a readiness to serve charge under the provisions of Article IV, Sec. 4 and/or Article IV, Section 5. If the Council does not elect that the Town construct such an extension, it may permit the petitioners to construct the same for dedication to the Town upon a determination that such extension is consistent with Town plans for public sewers, is properly located and sized, and may lawfully be so constructed. Such sanitary sewer shall be designed by a registered engineer, its design and acceptance shall be in accordance with the provisions of Article VII, Sec. 3, 4 and 5. Any sewer extension shall be of adequate size and depth to permit further extensions of sewer service.

Sec. 3 The Town Council may, on its own initiative, determine to extend the public sewer down an unsewered public way within the Town if it determines that such an extension would be in the best interest of the health and welfare of the abutting property owners along said way. When such extensions are made by Council Order, the cost of the construction of the actual extension will be borne by the Town. However, all abutting land owners who are discharging septic waste shall be required to connect to said sewer at such times as their existing septic system fails or when any new or replacement system is proposed for existing dwellings or as part of the development of vacant land adjoining said sewer extension. The Town Council shall, by Order, establish an access charge equal to a reasonable reimbursement to the Town for its cost in extending said sewer. Said Order shall be specific to each new sewer extension and shall be attached to this ordinance as a schedule of charges. No readiness to serve charge shall be made on said municipal sewer extensions constructed prior to October 31, 1999. A readiness to serve fee shall be made on all said municipal sewer extensions constructed after October 31, 1999. No The only other costs shall to be assessed against the to all property owners except said served by a municipal sewer extension shall be the determined access charge, permit fees and installation costs, when the property becomes served by the sewer directly, and thereafter property owners shall pay all normal charges assessed to users within this ordinance. Any such sewer extensions approved by the Town Council shall comply with the design standards adopted by the Town for all
Sec. 23 "Sewer Permit" shall mean a written permit obtained from the Town for disposal of sewage from a commercial or residential unit through appropriate building drains to the public sewer and finally to the Town's wastewater facilities.

Sec. 24 "Sewer User Unit" shall mean the measure of flow equal to that generated by the average single family household, which is 310 gallons per day.

Sec. 2325 "Shall" is mandatory (see "may", Sec. 13).

Sec. 2426 "Slug" shall mean any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes or more than five (5) times the average twenty-four hour concentration of flows during normal operation and shall adversely affect the collection system and/or performance of wastewater treatment works.

Sec. 2527 "Storm drain" (Sometimes termed "Storm sewer") shall mean a drain or sewer for conveying water, groundwater, sub-surface water, or unpolluted water from any source.

Sec. 2628 "Superintendent" shall mean the official directly in charge of the Cumberland sewer system as designated by the Town Council, or the superintendent's authorized deputy, agent or representative.

Sec. 2729 "Suspended solids" shall mean the total suspended matter that either floats on the surface of, or is in suspension in, water, wastewater, or other liquids, and that is removable by laboratory filtering as prescribed in "Standard Methods for the Examination of Water and Wastewater" and referred to as nonfilterable residue.

Sec. 2830 "Unpolluted water" is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

Sec. 2931 "Town" shall mean the Town of Cumberland, Maine.

Sec. 3032 "Town Council" shall mean the duly elected Town Council of the Town of Cumberland.
wastewater treatment plant, shall at the owner's own expense connect its wastewater facilities directly with the proper public sanitary sewer in accordance with the provisions of this ordinance within 90 days after the date of notice by the superintendent to do so. The 200-foot measurement shall be made by a straight line from the end of any stub provided by the Town, otherwise from any gravity portion of the public sewer, to a point on the building other than the foundation for any garage or other attached accessory building unless it contains a toilet or sink, or contains other facilities regularly generating sewage.

If the owner can provide to the satisfaction of the superintendent that a suitable private wastewater disposal is currently in use, the owner shall be exempt from connecting to the public sewer, but shall be assessed a readiness to serve fee equal to the minimum charge as established if a connection were made.

Sec. 5 All owners of sewer user units shall be subject to a readiness to serve fee equal to the minimum charge as established as if a connection had actually been made to a single family residence, whether such connection has actually been made or not, times the number of sewer user units owned, subject to the exceptions stated in Article VII, Section 3.

ARTICLE V. PRIVATE WASTEWATER DISPOSAL

Sec. 1 The owner of any house, building or other structure who is not required to connect its wastewater facilities to a public sanitary sewer in accordance with the provisions of Article IV, Section 4 hereof, shall connect the building sewer to a private wastewater disposal system complying with the provisions of this Article and the State of Maine Subsurface Wastewater Disposal Rules, Chapter 241.

Sec. 2 Before commencement of construction of a private wastewater disposal system the owner(s) shall first obtain a written permit signed by the licensed plumbing inspector. The application for such permit shall be made on a form furnished by the Division of Health Engineering, Maine Department of Human Services, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the plumbing inspector. A permit and inspection fee shall be paid to the plumbing inspector at the time the application is filed.

See page 6
within 30 days of the date of the hearing shall constitute a denial of said appeal.

Sec. 4 Appeal Procedure.

(a) Any person and any municipal department aggrieved by the decision of the Superintendent, the Town Health Officer and/or the Plumbing Inspector, which decision arises from provisions of this ordinance, may appeal such decision to the Board of Sewer Appeals.

(b) Within 30 days of the date of the decisions of the Superintendent, Health Officer, and/or Plumbing Inspector, the appeal shall be entered at the office of the Town Clerk upon forms to be approved by the Board of Appeals. The appellant shall set forth in said form the grounds of the appeal and shall refer to the specific provisions of the Sewerage Ordinance involved. Following the receipt of any appeal, the Town Clerk shall notify forthwith the officer concerned and the Chairman of the Board of Sewer Appeals. The appellant shall pay to the Town Treasurer a fee as set by the Town Council.

(c) An aggrieved party may appeal from the decision of the Board of Sewer Appeals to the Superior Court as provided by the laws of the State of Maine.

Sec. 5 Successive Appeals. After a decision has been made by the board of Sewer Appeals, a new appeal of similar import shall not be entertained by the Board until one year shall have elapsed from the date of said decision, except that the Board may entertain a new appeal if the Chairman believes that, owing to a mistake of law or misunderstanding of fact, an injustice was done, or if he believes that a change has taken place in some essential aspect of the appeal.

ARTICLE XII. SEWER SERVICE CHARGES

Sec. 1 Sewer service charges totaling 100 percent of the revenues needed for retiring debt services, capital expenditures, operation and maintenance of the public sewerage works shall be collected from all users of the public sewer system and those required to pay a readiness to serve charge as defined in Article 4, Section 4 and/or Article IV, Section 5.

Sec. 2 Sewer Service Charge rates, including readiness to serve charges, shall be determined by the Town
Council. This charge will be billed on a monthly or quarterly basis throughout each calendar year.

Sec. 3

The Sewer Service Charge to any user shall be based on the amount of water estimated or measured as shown on the records of the Portland Water District, provided to the sewer user during the previous billing period; provided, however, that where water is obtained from a source or sources other than the Portland Water District, whether or not Portland Water District also supplies water, the computation shall include the amount of water obtained from all such other sources, unless the user establishes to the satisfaction of the Superintendent that the water from such other sources is not entering the sewer system. The Superintendent may require additional metering, either of water sources or of the sewer outflow, to be installed and maintained at the owner's expense where, in the Superintendent's opinion, such metering is required to accurately measure the volume of wastewater entering the sewer system.

Any person who feels that recorded water records are not a reliable index of the discharge volume may install an additional water meter of a type approved by the Superintendent to measure the volume of water which can be shown not to enter the sewerage system. The person installing such a meter shall immediately notify the Superintendent of such installation and shall be responsible to the Superintendent for reporting meter readings not less often than every three months. Such person shall be credited with the volume charges for the volume shown by such meter, which meter shall be accessible for reading by the Town or its agents at all reasonable times.

Sec. 4

There shall be a readiness to serve charge equal to the minimum sewer service charge for those properties that can be served as defined in Art. IV, Section 4 and Article IV, Section 5, but that have not connected to the public sewer system. The payment of such charge in no way affects the obligation of the owner of such property to connect to the public sewer system in conformance with the Ordinance. These funds can be used only for payment of fixed costs that are not related to flow.

Sec. 5

Each owner of sewer user units shall pay a minimum sewer service charge for fixed costs, not related to flow, for each sewer user unit owned regardless of actual water usage, whether the unit is in use or not, subject to the exceptions stated in Article VII, Section 3.

(See page 23)
Sewer System Users - September 2007 2 of 2
ITEM
07-133

To authorize a permit to MDOT for overweight trucks for 2008 Route 100-culvert project
MEMORANDUM

TOWN OF CUMBERLAND, MAINE
290 TUTTLE ROAD
CUMBERLAND, MAINE 04021
TEL: 207-829-2205 FAX: 829-2224

To: Town Council
From: William R. Shane, Town Manager
Date: October 2, 2007
Re: MDOT Overweight Permit – Rt. 100 Project

The attached sheet is required for all MDOT projects and essentially protects the Town owned Roads (Bruce Hill and Range Road in particular) from being impacted during construction. The Town has the option to require contractors post an overweight limit bond when traveling on Town roads and you may set a maximum speed limit for trucks at 25 mph.

MDOT bonds are $15,000 +/- per mile which is relatively small compared to our paving prices today, so I am recommending $40,000 per mile which will equal a .75” overlay over the entire road if damaged.
Return this AGREEMENT, when completed, to:

Maine Department of Transportation  
ATTN: Mr. Scott Bickford, Contracts & Specifications Engineer  
#16 State House Station, Child Street  
Augusta, ME 04333-0016

Project No. BR-1267(900)X  
Location: Cumberland

Pursuant to 29-A MRSA § 2382, the undersigned municipal officers of the **Town of Cumberland** agree that a construction overlimit permit will be issued to the Contractor for the above-referenced project allowing the contractor to use overweight equipment and loads on municipal ways.

The municipality may require the contractor to obtain a satisfactory bond pursuant to 29-A MRSA § 2388 to cover the cost of any damage that might occur as a result of the overweight loads. If a bond is required, the exact amount of said bond should be determined prior to the use of any municipal way. The Maine DOT will assist in determining the amount of the bond if requested. A suggested format for a general construction overlimit bond is attached. A suggested format for a construction overlimit permit is also attached. This construction overlimit permit does not supersede rules that restrict the use of public ways, such as posting of public ways, pursuant to 29-A MRSA § 2395.

The maximum speed limit for trucks on any municipal way will be 25 mph (40 km per hour). The Town shall require a bond of $40,000 per mile for the use of Town roads by MDOT contractors pursuant to 29-A MRSA § 2388.

**TOWN OF CUMBERLAND**  
By the Municipal Officials

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jeff Porter, Council Chair</td>
<td>William Stiles, Town Councilor</td>
</tr>
<tr>
<td>Ronald Copp, Jr., Town Councilor</td>
<td>Shirley Storey-King, Town Councilor</td>
</tr>
<tr>
<td>Stephen Moriarty, Town Councilor</td>
<td>George Turner, Town Councilor</td>
</tr>
<tr>
<td>Michael Perfetti, Town Councilor</td>
<td></td>
</tr>
</tbody>
</table>
Subject: Bridge Replacement
Project #: BR-1267 (900)X
Town of Cumberland

Dear Mr. Shane:

The Maine Department of Transportation will soon advertise the subject project for construction, and pursuant to 29-A MRSA § 2382 (7) we have established a “Construction Area”. A copy of 29-A § 2382 is enclosed for your information. Also included is an agreement, which requires signature by the municipal officers, and additional background documents.

The agreement stipulates that the municipality will issue a permit for a stated period of time to the MDOT contractor for transporting construction equipment (backhoes, bulldozers, etc.) that exceed legal weight limits, over municipal roads. The agreement acknowledges the municipality’s right to require a bond from the contractor to “guarantee suitable repair or payment of damages” per 29-A MRSA.

29-A MRSA § 2382 (7) states that “the suitability of repairs or the amount of damage is to be determined by the Department of Transportation on state-maintained ways and bridges, otherwise by the municipal officers”. In other words, municipal officers determine the suitability of repairs on municipal ways and bridges.

The State cannot force municipalities to allow overweight vehicles to travel on posted municipal roads. Municipal postings supersede overweight permits. However, the agreement requires municipalities to make reasonable accommodations for overweight vehicles that are operated by contractors and the MDOT in connection with the construction project.

The specific municipal roads involved are not necessarily known at present, as the contractor’s plan of operation won’t be known until just prior to the start of work. If the municipality plans to require a bond; the amount of the bond should be determined prior to the start of work. If the project number administratively changes, you will be notified, and the agreement modified accordingly. Please return the completed agreement to my attention. Should you have any questions, please contact me at 624-3410.

Sincerely,

Scott Bickford
Contracts & Specifications Engineer
Bureau of Project Development
SPECIAL PROVISION 105
CONSTRUCTION AREA

A Construction Area located in the Town of Cumberland has been established by the Maine Department of Transportation (MDOT) in accordance with provisions of 29-A § 2382 Maine Revised Statutes Annotated (MRSA).

(a) The section of highway under construction beginning at Sta. 15+50.00 and ending at Sta. 17+00.00 of the construction centerline plus approaches.

(b) (Doughty Br.) The section of highway under construction beginning at Sta. 15+50.00 and ending at Sta. 17+00.00 of the new construction centerline plus approaches.

Per 29-A § 2382 (7) MRSA, the MDOT may “issue permits for stated periods of time for loads and equipment employed on public way construction projects, United States Government projects or construction of private ways, when within construction areas established by the Department of Transportation. The permit:

A. Must be procured from the municipal officers for a construction area within that municipality;

B. May require the contractor to be responsible for damage to ways used in the construction areas and may provide for:

(1) Withholding by the agency contracting the work of final payment under contract; or

(2) The furnishing of a bond by the contractor to guarantee suitable repair or payment of damages.

The suitability of repairs or the amount of damage is to be determined by the Department of Transportation on state-maintained ways and bridges, otherwise by the municipal officers;

C. May be granted by the Department of Transportation or by the state engineer in charge of the construction contract; and

D. For construction areas, carries no fee and does not come within the scope of this section.”

The Municipal Officers for the Town of Cumberland agreed that an Overlimit Permit will be issued to the Contractor for the purpose of using loads and equipment on municipal ways in excess of the limits as specified in 29-A MRSA, on the municipal ways as described in the “Construction Area”.

As noted above, a bond may be required by the municipality, the exact amount of said bond to be determined prior to use of any municipal way. The MDOT will assist in determining the bond amount if requested by the municipality.

The maximum speed limits for trucks on any town way will be 25 mph (40 km per hour) unless a higher legal limit is specifically agreed upon in writing by the Municipal Officers concerned.
Location Map

Cumberland
Doughty Bridge #2233
PIN 12679.00
Route 26 over the Piscataqua River
GENERAL GUIDANCE
CONSTRUCTION OVERLIMIT PERMIT AND BONDING

The Maine Bureau of Motor Vehicles (BMV) establishes requirements and standards for the permitting of non-divisible over dimensional and overweight vehicles and loads (collectively overlimit loads) on state roads. These state motor vehicle permits are available on-line. 29-A MRSA and Secretary of State Administrative Rules Chapters 155-157 apply. Additionally, municipalities and county commissioners may issue overweight permits for travel on municipal and county ways maintained by that municipality or county. These permits are typically single trip permits requiring vehicle registration data, intended route etc.

However, in this case we’re dealing with Construction Permits involving overlimit loads in support of construction projects. According to 29-A MRSA § 2382 (7), a Construction Permit is a permit “for a stated period of time that may be issued for loads and equipment employed on public way construction projects, United States Government projects or construction of private ways, when within construction areas established by the Department of Transportation”. According to 29-A § 2382 MRSA, the construction overlimit permit must be procured from the municipal officers for overweight loads on a municipal way in support of a construction project within that municipality.

By signing the attached agreement, the municipality agrees to issue construction overlimit permits to the MDOT construction contractor.

Frequently Asked Questions:

A. Why sign the document in advance of the actual construction contract?

Response: There are three primary reasons: First, to comply with 29-A § 2382. Second, to ensure that there are no surprises regarding the use of municipal roads by the Maine DOT contractor (to reasonably reduce risk and thus keep the cost of construction down) and third, to ensure the town is aware of its rights to control its own roads, and its rights to require a separate contractor’s bond. (This is in addition to the Payment Bond and the Performance Bond the Maine DOT requires of the contractor).

B. Different roads may require different levels of scrutiny. How is a posted road handled?

Response: Despite the general construction overweight permit, the contractor cannot exceed the load limit on a posted municipal road without specific municipal permission. 29-A § 2395 MRSA notes that any ways requiring special protection (such as posted roads) will continue to be protected and overweight permits are superseded by such postings. In such a case the contractor would have to use an alternate route.
C. Is there any reason why the contractor cannot be held to indemnify and hold harmless the Municipality beyond the simple posting of a bond?

Response: The objective of our standard letter is to deal with overweight equipment and trucks on municipal ways during construction of an Maine DOT construction project. The bond merely provides a measure of protection against damage to municipal ways as a direct result of construction activity. Other areas of risk and indemnification are beyond the scope of our letter.

D. Are we required to obtain a bond?

Response: No. In fact, few municipalities have required a construction bond. It is a matter of risk management.

E. If used, what amount should be required on the bond?

Response: Previous MDOT letters used to speak about a maximum bond amount of $14,000 / mile ($9,000 / kilometer) of traveled length, however 29-A § 2382 sets no maximum. The amount of the bond (if any bond is required at all) is based on the individual situation. The MDOT will assist in providing a bond amount estimate if so requested.

F. Why the blanket approval?

Response: The blanket approval we seek is the reasonable accommodation by the municipality to allow the Maine DOT contractor to use town ways (if required) to haul overweight construction equipment and trucks. This theoretically gives the municipality and the MDOT time to discuss exceptions to a blanket approval. In general, this avoids unnecessary risks and saves money for all concerned in the long run.

G. Who determines the suitability of repairs?

Response: For municipal ways, the suitability of repairs may be determined by municipal officers. The MDOT will assist.

H. What is a non-divisible load?

Response: Per Chapter 157 (The Administration of Over-Dimension and Overweight Permits) under the Secretary of State administrative rules (See Rule Chapters for the Department of the Secretary of State on line), a non-divisible load is defined as: A load which, if separated into smaller loads or vehicles, would:

1) make it unable to perform the function for which it was intended;
2) destroy its value or;
3) require more than eight work hours to dismantle using appropriate equipment. Sealed oceangoing containers, spent nuclear materials in casks, and government-controlled military vehicles and their loads will be considered non-divisible.
I. What is the standard for Overweight trucks and equipment?

Response: Overweight means a weight that exceeds the legal limits established in 29-A MRSA Chapter 21.

II. This is an unorganized township with no county or municipal roads. Why should I respond?

Response: Because of limited staff, we send out a standard letter to cover contingencies and minimize risk to the construction process. From time to time the letter may not have a practical application. In most cases of unorganized territories, the agreement is signed and returned as a matter of routine. This ensures that surprises will not be encountered after the start of construction regarding travel over municipal and county ways.

Additional tips:

False Information - Permit are invalidated by false information. A permit is invalidated by the violation of any condition specified by the terms of the permit or by false information given on the application. On evidence of such violation of falsification, the permittee may be denied additional permits.

Proper Registration - Overload permits do not relieve the registrants of vehicles from their obligations to properly register their vehicles in accordance with Motor Vehicle Laws.

Agent’s Power of Attorney - If you do require a contractor’s bond, make sure you have a copy of the Surety Agent’s power of attorney authorizing the surety agent to sign for the surety. Keep the power of attorney with your duplicate original bond at the municipality. The contractor will also have a duplicate original.

Other bonds - The Maine DOT requires a payment bond and a performance bond of the contractor which is held against unsatisfactory performance on the part of the contractor for all construction projects over $100,000. (The Miller Act (40 U.S.C. 270a-270f) normally requires performance and payment bonds for any federal aid construction contract exceeding $100,000. 14 MRSA § 871 provides a similar requirement for state funded construction projects.) These bonds cover the proper performance of the contract and the payment of all employees, suppliers and subcontractors.
SPECIAL PROVISION 105
OVERLIMIT PERMITS

Title 29-A § 2382 MRSA Overlimit Movement Permits.

1. Overlimit movement permits issued by State. The Secretary of State, acting under guidelines and advice of the Commissioner of Transportation, may grant permits to move nondivisible objects having a length, width, height or weight greater than specified in this Title over a way or bridge maintained by the Department of Transportation.

2. Permit fee. The Secretary of State, with the advice of the Commissioner of Transportation, may set the fee for single trip permits, at not less than $6, nor more than $30, based on weight, height, length and width. The Secretary of State may, by rule, implement fees that have been set by the Commissioner of Transportation for multiple trip, long-term overweight movement permits. Rules established pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

3. County and municipal permits. A county commissioner or municipal officer may grant a permit, for a reasonable fee, for travel over a way or bridge maintained by that county or municipality.

4. Permits for weight. A vehicle granted a permit for excess weight must first be registered for the maximum gross vehicle weight allowed for that vehicle.

5. Special mobile equipment. The Secretary of State may grant a permit, for no more than one year, to move pneumatic-tire equipment under its own power, including Class A and Class B special mobile equipment, over ways and bridges maintained by the Department of Transportation. The fee for that permit is $15 for each 30-day period.

6. Scope of permit. A permit is limited to the particular vehicle or object to be moved, the trailer or semitrailer hauling the overlimit object and particular ways and bridges.

7. Construction permits. A permit for a stated period of time may be issued for loads and equipment employed on public way construction projects, United States Government projects or construction of private ways, when within construction areas established by the Department of Transportation. The permit:

   A. Must be procured from the municipal officers for a construction area within that municipality;

   B. May require the contractor to be responsible for damage to ways used in the construction areas and may provide for:

      (1) Withholding by the agency contracting the work of final payment under contract; or
(2) The furnishing of a bond by the contractor to guarantee suitable repair or payment of damages.

The suitability of repairs or the amount of damage is to be determined by the Department of Transportation on state-maintained ways and bridges, otherwise by the municipal officers;

C. May be granted by the Department of Transportation or by the state engineer in charge of the construction contract; and

D. For construction areas, carries no fee and does not come within the scope of this section.

8. Gross vehicle weight permits. The following may grant permits to operate a vehicle having a gross vehicle weight exceeding the prescribed limit:

A. The Secretary of State, with the consent of the Department of Transportation, for state and state aid highways and bridges within city or compact village limits;

B. Municipal officers, for all other ways and bridges within that city and compact village limits; and

C. The county commissioners, for county roads and bridges located in unorganized territory.

9. Pilot vehicles. The following restrictions apply to pilot vehicles.

A. Pilot vehicles required by a permit must be equipped with warning lights and signs as required by the Secretary of State with the advice of the Department of Transportation.

B. Warning lights may be operated and lettering on the signs may be visible on a pilot vehicle only while it is escorting a vehicle with a permit on a public way.

With the advice of the Commissioner of Transportation and the Chief of the State Police, the Secretary of State shall establish rules for the operation of pilot vehicles.

9-A. Police escort. A person may not operate a single vehicle or a combination of vehicles of 125 feet or more in length or 16 feet or more in width on a public way unless the vehicle or combination of vehicles is accompanied by a police escort. The Secretary of State, with the advice of the Commissioner of Transportation, may require a police escort for vehicles of lesser dimensions.
A. The Bureau of State Police shall establish a fee for state police escorts to defray the costs of providing a police escort. A county sheriff or municipal police department may establish a fee to defray the costs of providing police escorts.

B. The Bureau of State Police shall provide a police escort if a request is made by a permittee. A county sheriff or municipal police department may refuse a permittee's request for a police escort.

C. A vehicle or combination of vehicles for which a police escort is required must be accompanied by a state police escort when operating on the interstate highway system.

10. Taxes paid. A permit for a mobile home may not be granted unless the applicant provides reasonable assurance that all property taxes, sewage disposal charges and drain and sewer assessments applicable to the mobile home, including those for the current tax year, have been paid or that the mobile home is exempt from those taxes. A municipality may waive the requirement that those taxes be paid before the issuance of a permit if the mobile home is to be moved from one location in the municipality to another location in the same municipality for purposes not related to the sale of the mobile home.

11. Violation. A person who moves an object over the public way in violation of this section commits a traffic infraction.

Section History:
PL 1993, Ch. 683, §A2 (NEW).
PL 1993, Ch. 683, §B5 (AFF).
PL 1997, Ch. 144, §1,2 (AMD).
PL 1999, Ch. 117, §2 (AMD).
PL 1999, Ch. 125, §1 (AMD).
PL 1999, Ch. 580, §13 (AMD).
PL 2001, Ch. 671, §30 (AMD).
PL 2003, Ch. 166, §13 (AMD).
PL 2003, Ch. 452, §Q73,74 (AMD).
PL 2003, Ch. 452, §X2 (AFF).
ITEM 07-125

To set a Public Hearing date (October 22\textsuperscript{nd}) for consideration of speed limit reduction request to MDOT for Greely Road (45 to 35 mph)
MEMORANDUM

To: Town Council
From: William Shane, Town Manager
Date: October 2, 2007
Re: Greely Road speed limit reduction request

This will be the third time in the last ten years that the Town Council has requested the speed limit on Greely Road be reduced. This is the only "Town" road posted at 45 mph.

Remember, our process has been as follows:

1) Analyze request to determine if it is worthwhile to advertise for a Public Hearing.
2) Hold a Public Hearing.
3) Vote to send or not to send to MDOT.
4) Wait for reply.

I have attached my last letter to MDOT and the 2004 comments from State Trooper, Mike Edes, for your review.
May 26, 2004

Mr. Randy Dunton, P.E. PTOE
MDOT Traffic Engineer - Division 6
83 Pleasant Hill Road
Scarborough, Maine 04072

Re: Greely Road Speed Re-Evaluation Request

Dear Randy:

This summer the Twin Brook facility on Greely Road will open for its first season of use. Greely Road as you know has posted speed limits of 35 MPH and 45 MPH.

With more densely populated neighborhoods, farms and farming equipment using the road as well as pedestrian and vehicular traffic to the new athletic facility, I would request that you re-evaluate the 45 MPH speed zone along Greely Road and consider if a reduction to 35 MPH could be supported.

We are also seeing an increased amount of traffic because of the higher speed limit on Greely versus Tuttle Road. Both roads run parallel between Route 9 and Route 1 but Tuttle is posted at 35 MPH.

A Public Hearing was held on this issue on Monday, May 24, 2004 and the Town Council after Public Comment voted 7-0 to send this to your office for further consideration.

Sincerely,

William R. Shane
Town Manager
William Shane

From: William Shane  
Sent: Friday, June 04, 2004 7:23 AM 
To: Steve Moriarty (smoriarty@nhdlaw.com); B Stiles (wstiles1@maine.rr.com); Bill Stiles (wstiles@maine.rr.com); Donna Damon (publicservant1@aol.com); Harland Storey (cstorey@gwi.net); Jeffrey.Porter@mail.doc.gov; Mark Kuntz (chinook96@msn.com); MesitS@aol.com; Mike Savasuk (mxslaw@maine.rr.com); William Shane; Nadeen Daniels
Subject: FW: Greely Road speed limit 
Attachments: MDOT- Dunton May 26,2004.doc

Mike,

Thank you for your comments. I have forwarded them to the Town Council.  Professionally, I don't anticipate a reduction in the speed. MDOT did a study several years ago and found the road to be properly posted for speed. With the opening of Twin Brook on Greely Road, the section of Greely Road from Main St to Hillside should be 35 MPH, but with the remainder of the road rural and the houses set back off the road I'm not confident MDOT will be reducing the speed limit.

I have attached my letter to MDOT for your use. You may wish to contact Randy Dunton directly as he is the deciding authority on this request.

We have a similar request from Forest Lake Road on the Council agenda for June 14th for a speed limit reduction. I'd be happy to drop you an e-mail when Speed Reduction requests come before the Town Council. With your extensive State Police background and knowledge of the area your insight would be helpful to the Town Council when reviewing these matters.

Thank you again for taking the time to share your concerns

Bill

William R. Shane, P.E.  
Town Manager  
250 Tuttle Road  
Cumberland, Maine 04021  

(207) 829-2205 Phone  
(207) 829-2224 FAX

wshanecurrencemaine.com

-----Original Message-----
From: Mike Edes [mailto:sp238@maine.rr.com]  
Sent: Thursday, June 03, 2004 6:38 PM  
To: William Shane  
Subject: Greely Road speed limit

Hi Bill,
I was just skimming through the Falmouth Forecaster and I noticed the article about the town council's vote to ask for a lower speed limit on Greely Road. I wish I had noticed that this was going to be brought up at the council meeting, as I would of like to of given my opinion to the council on the subject. For what it's means, I thought I'd throw in my 2-cents worth.

I've lived on Greely Road for the past 12-years. My property borders the corner of Edes & Greely Road. In the entire time that I have lived there and the thousands of times that I have travelled back and forth,
I have only written 2 speeding tickets on that stretch of the roadway. Working the midnight shift, prior to my securing for day I have purposely set up with radar a number of mornings in the area of the Ingraham residence. I can tell you as general rule, the speed limit in that area is followed and if anything, a large percentage of the vehicles going through there are actually below the speed limit. Lowering the speed limit is not going to solve the problem of the occasional nit-wit driving through there over the speed limit. Cumberland PD does a great job patrolling the town, but they can sit there for 8-hrs straight and 5 minutes after they leave, somebody might come through over the speed limit. This same problem will occur whether the limit is 35 or 45 mph.

I am totally against lowering the speed limit in that area. It is unnecessary and there is not a speeding problem on that road. If there was a problem, with two kids of my own, I would be the first to let you know. Like I said, my radar is on everytime I travel up and down Greely Road and very rarely do I encounter a speeder.

Let me know if you would like any other information on this and I would be more than happy to make myself available.
Sincerely,
Mike