

## WASTEWATER RESERVE CAPACITY ALLOCATION ORDINANCE

The Selectmen of the Town of Stowe hereby ordain the following procedures governing the allocation of wastewater treatment capacity:

### 1. Ownership & Permit

The Town of Stowe owns and operates a sewage treatment and disposal plant (PLANT) and a sewage collection and transmission system (SEWERS) as defined in 24 V.S.A., Section 3501 (6) and 3601. The PLANT has a permitted capacity, and is operated in accord with a discharge permit issued by the Vermont Department of Environmental Conservation (DEPARTMENT) under authority granted in 10 V.S.A., Chapter 47. The BOARD is obliged by law to comply with conditions of that permit, and to operate and manage the PLANT and SEWERS as governmental functions under and pursuant to 24 V.S.A., Chapters 97 and 101.

### 2. Introduction to Reserve Capacity Allocation

The permitted capacity of the PLANT and SEWERS is the property of the Town of Stowe. The uncommitted reserve capacity of the PLANT and SEWERS shall be allocated by the BOARD in the manner described below. This ordinance is adopted pursuant to the provisions of 24 V.S.A., Section 3625, 10 V.S.A., Section 1263(g)(1), and in the manner provided in 24 V.S.A., Chapter 59, and shall not be construed as an abandonment or relinquishment of the responsibility of the BOARD to regulate, control and supervise all means and methods of sewage collection, treatment and disposal within the Town of Stowe, nor shall it be construed to impair or inhibit the ability of the Town of Stowe to contract with persons for the collection, transmission and treatment of sewage.

### 3. Definitions

The following words will have the meanings below when used in this ordinance:

- a) "Person" shall have the meaning described in 1 V.S.A., Section 128.
- b) "Department" shall mean the Vermont Department of Environmental Conservation.



- c) "Discharge Permit" shall mean a permit issued by the Department pursuant to authority granted in 10 V.S.A., Chapter 47.
- d) "BOARD" shall mean the Board of Selectmen of a Town, the Trustees of a Village or the Prudential Committee of a Fire District acting as a Board of Sewage Disposal Commissioners under 24 V.S.A., Section 3614.
- e) "Impact Fee" shall mean a fee imposed on applicants for capacity allocation equal to the cost per gallon of sewage disposal and treatment capacity attributable to the project or development.
- f) "Connection Fee" shall mean a fee imposed on applicants for the cost of performing, supplying materials, supervising, inspecting and administering a connection to the sewage system or for any portion of these activities.
- g) "Plant Wastewater Flow" is the wastewater passing through the treatment plant in gallons per day on an annual average basis (365 day average) except where flows vary significantly from seasonal development. In these cases, plant wastewater flow is determined as the average throughout the high seasonal use period.
- h) "Permitted Wastewater Flow" is the maximum plant wastewater flow authorized in the Discharge Permit on an annual average (365 day average) basis.
- i) "Development Wastewater Flow" is the flow resulting from full use of the development at its peak daily capacity, which flow shall be calculated using flow quantities, adopted as rules by the Department, as promulgated at the time a connection permit application is made.
- j) "Reserve Capacity" is the permitted wastewater flow minus the actual plant wastewater flow during the preceding 12 months.
- k) "Uncommitted Reserve Capacity" is that portion of the reserve capacity remaining after subtracting the development wastewater flow of all projects approved by the Department and not yet discharged to the sewer.

- l) "Committed Reserve Capacity" is the amount of total average daily flow (gallons per day) from all projects/buildings approved by the BOARD and the Department for discharge to the treatment plant, but not yet discharged at the time of calculation.
- m) "Sanitary Wastewater" is wastewater of the same character and range of strength as expected from homes.
- n) "Sewer Service Area" is the area of a municipality that is serviced by municipal sewers to within 100 feet of existing or proposed structures.
- o) "Affordable Housing" means housing units that are available at a cost of no more than 30% of a family's gross annual income when such income is equal to or below the county median. Housing unit costs for renters are rent and utilities, including heat, hot water, trash, and electricity. Housing unit costs for homeowners are principal, interest, property taxes and insurance. When the number of affordable units being built exceeds four, at least 20% of those units shall be affordable to families with an income under 50% of the median, and an additional 20% of those units shall be affordable to families with an income under 80% of the median income. In addition, the affordability of the units shall be "permanently affordable" through covenants that run with the land.
- p) "Permanently Affordable" means housing units qualifying as affordable for a minimum of 99 years.
- q) "Median Income" means median income for the town adjusted for family size.
- r) "Gross Income" means family income from all sources, both taxable and nontaxable.

#### 4. Reserve Capacity Allocation

##### A) Allocation Flow Basis

All allocations to projects shall be based on the development wastewater flow. Any differential between actual flows and development wastewater flows that occurs is not available to the development owner.

## B) Allocation Priorities

Allocation of uncommitted reserve capacity shall comply with the following priorities intended to govern the gross allocation of reserve capacity before the allocation principles are applied to specific projects:

Residential, commercial, institutional and industrial facilities existing within the sewer service area on the date of adoption of this ordinance which are required to be connected to the municipal sewer by the municipal sewer ordinance, or by virtue of existing pollution from the facilities to the waters of the State, including local groundwater sources, which pollution cannot be eliminated or abated by means of reconstruction of the on-site system, shall be entitled to first priority in allocation of uncommitted reserve capacity, provided the wastewater is of sanitary nature.

No allocation of uncommitted reserve capacity shall be made to facilities outside the sewer service area existing on the date of adoption of this ordinance unless for each such proposed expanded service the majority of the attending residents of the municipality who pay the debt for the existing sewage system vote by ballot at a legally warned meeting to serve specific facilities outside the existing sewer service area. The costs of any such expanded services shall be born by these added users.

## C) Allocation Principles

Subsequent to application of the allocation priorities, uncommitted reserve capacity in the wastewater treatment facility may be allocated to specific projects according to the following principles:

- a) Once sewer permit applications have been returned to the Selectmen's office and dated by the person receiving the application, the BOARD may review the applications on a first-come, first-served basis. The total remaining wastewater capacity shall be allocated by the BOARD in such a way that uncommitted capacity is issued in percentile shares according to user classifications. The total reserve capacity will be determined each six months, and committed reserve will be recorded continuously for use in allocation decisions.

Reserve Capacity Allocation Shares for Classifications:

Institutional (Town Owned)	9%
Affordable Housing	18%
Primary Residential	18%
Commercial	22.5%
Other Residential	18%
Industrial	4.5%
Contingency	10%

- b) The BOARD retains the right to adjust allocations of capacity on a case-by-case basis when strict adherence to the principle above is not in the municipality's best interest.

5. Cost Recovery for SEWERS and/or Treatment Plant Expansion

- A) Any expansion of the SEWERS and/or Treatment Plant to provide for new users shall be funded in the following way:

The proposed users pay that portion of the cost of expansion and upgrade of the SEWERS/PLANT deemed appropriate by the BOARD. In determining this portion, the BOARD shall consider the percentage of existing development out of the total of existing and proposed development to be served. In determining this portion of the cost, the BOARD shall also consider whether or not the existing developments have helped finance the existing sewage system and what portion of the expansion or upgrade, if any, shall be deemed to benefit the Town as a whole and should consequently be financed through local taxes.

- B) Any payments made as required by Section 5(A) shall not be construed as payments toward treatment capacity that may be provided for the development.
- C) Payment for treatment capacity shall be in the form of a cost-per gallon fee based upon the impact to the PLANT and/or SEWERS of the project development. In establishing the impact fee, the BOARD shall take into account; (1) the capital and related costs of the PLANT and/or SEWERS expansion that the BOARD has determined will be paid by users, and (2) the total number of

gallons of increased capacity. The treatment capacity impact fee shall be the costs in (1) divided by the gallons in (2), rounded to the next highest whole number.

Payment of the treatment capacity impact fee shall be as follows: 50% of the impact fee shall be due and payable at the time capacity is allocated by the BOARD; the remaining 50% shall be due and payable before the issuance of the local building permit.

Projects may be phased in by agreement between the Town and the applicant, or when required by the Town. If contract is made for one phase, allocation for gallonage therein provided shall be for only that phase, and the Town shall not, thereby, be deemed to have bound or committed itself to enter into contracts for additional phases, or to provide gallonage therefor, nor shall the applicant be deemed bound or committed to construct future phases. Such contract shall be binding only for the phase therein described as if no other phases were intended, and the treatment capacity impact fee shall be computed on that phase. If a contract describes more than one phase of a total project, then the impact fee shall be computed on the whole described project and shall be payable as provided here, except that the final 50% payment shall be due and payable in proportion to such phases before the issuance of the local building permit for the first unit in each phase.

Gallonage that has been allocated but unused by virtue of the expiration of the permit as described in Section 9 d below, shall be withdrawn and returned to the PLANT's uncommitted capacity. 75% of any impact fees paid for the unused gallonage shall be returned without interest.

The BOARD may revise this and other fees from time to time as the needs of the Town's sewage treatment system may make necessary.

#### 6. Application Requirement

Persons wishing to use the PLANT and SEWERS shall apply to the BOARD on a form described by the BOARD. Such application shall:

- a) be accompanied by a calculation of the development wastewater flow to be generated by the project/development;

- b) include calculations for the volume, flow rate, strength and any other characteristics deemed appropriate by the BOARD;
- c) unless waived by the BOARD, all calculations required in (a) and (b) above for developments generating over 1000 gpd shall be certified by a Vermont registered engineer.
- d) be accompanied by plans and specifications for the construction of building sewers (from the buildings to the municipal sewers) and any municipal sewer extensions, including pump stations, required to service the development, prepared by a Vermont registered engineer. This requirement to submit plans and specifications may be waived by the BOARD until final connection approval.

7. Preliminary Connection Approval Findings

Upon receipt of the connection application and supporting documents, the BOARD may give preliminary approval of uncommitted capacity upon making affirmative findings that:

- a) the proposed wastewater is of domestic sanitary origin and that there is sufficient uncommitted reserve capacity to accommodate the volume and strength of the proposed flow; or
- b) the proposed wastewater is not of domestic sanitary origin but that sufficient evidence has been presented by the applicant to demonstrate that the flow and character of the wastewater is compatible with the proper operation of the PLANT and SEWERS and that the proposed wastewater will not, alone or in combination with other wastes, cause a violation of the discharge permit, pass through the PLANT without treatment, interfere with or otherwise disrupt the proper quality and disposal of PLANT sludge or be injurious in any other manner to the PLANT or SEWERS and that there is sufficient uncommitted reserve capacity to accommodate the strength and volume of the proposed project/development; and
- c) the proposed use of wastewater capacity complies with the allocation priorities and principles and is not in conflict with any other enactment adopted by the BOARD or municipality.

## 8. Conditions of Preliminary Connection Approval

The BOARD, after making the approval findings above, may issue a preliminary connection approval, which approval shall be a binding commitment of capacity to the project, contingent on compliance with any conditions attached to the preliminary approval and the subsequent issuance of a final connection approval. The preliminary approval conditions may include:

- a) specifications of the period of time during which the interim connection approval shall remain valid (normally 120 days); provisions for time extensions if approved by the BOARD;
- b) incorporation of specific conditions that must be fulfilled by the applicant to maintain validity of the preliminary connection approval;
- c) provision for revocation by the action of the BOARD on failure of the applicant to fulfill requirements of the preliminary connection approval;
- d) specification that the recipient of the preliminary connection approval may not transfer, by any means, the preliminary connection approval to any other person or connect to the SEWERS.

PRIOR TO FINAL CONNECTION APPROVAL, THE FOLLOWING COMMITMENTS SHALL BE MET BY THE APPLICANT:

- a) Applicable local, State and Federal permits have been secured for the project/development;
- b) Connection fees, impact fees, permit fees and other local fees or taxes all set by the BOARD, have been paid in full to the Town of Stowe. Impact fees will be partially based on the volume and strength of the proposed wastewater flow.
- c) The plans and specifications for connection to and, if necessary, extension of the municipal SEWERS are acceptable to the BOARD.

## 9. Final Connection Approval Findings

The BOARD, on making affirmative findings that all conditions of the preliminary connection approval and final connection approval prerequisites in Section 8 have been fulfilled, shall issue the final connection approval permit which approval may be conditioned as follows:

- a) The permit shall specify the allowed volume, flow rate, strength, frequency and any other characteristics of the proposed discharge determined appropriate by the BOARD.
- b) The capacity allocation is not transferable to any other person or project unless requested by the original owner and approved by the BOARD.
- c) The construction of the connection and, if necessary, the municipal SEWER extension, must be overseen to assure compliance with the plans and specifications and good construction practice in a manner acceptable to the BOARD.
- d) Capacity allocated under this ordinance shall revert to the Town of Stowe if the permit recipient has failed to initiate construction within one (1) year of the issuance of the permit or has failed to complete construction within three (3) years of the issuance of the permit, unless the subdivision permit specifies that construction may proceed over a period longer than three years. Additionally, the BOARD may, for good cause, grant extensions of up to one (1) year at a time for a total of two (2) years. The BOARD shall make the final determination with respect to whether construction has been or could have been initiated or completed.

A revised development plan and connection application may be approved by the BOARD in the same manner as the original. Such revised plans must also be approved under local bylaws and by the applicable State laws and regulations. If the BOARD approves an amended development plan and connection application, it will issue a revised final connection permit with reduced or increased capacity allocation determined in accordance with the allocation priorities and principles. Where reduced capacity is granted in a revised connection permit, the unused capacity will revert to the Town of Stowe, and the Town will pay to the applicant a proportional refund of impact fees and, where appropriate, a portion of the connection fees, all without interest.

If a permit expires after three years or after any extension of time provided by the BOARD, the unused portion of the committed capacity allocation will revert to the Town of Stowe. The BOARD will determine the amount of unused capacity returned.

Generally the unused capacity is that associated with buildings that do not have at least foundations, framing and roofs.

10. Transfer of Allocation

- a) Reserve capacity is allocated by the BOARD to a specified project/development and person; the allocation is not made to a parcel of land, nor does the capacity run with the land.
- b) The transfer of the capacity allocation is prohibited unless approved in writing by the BOARD at the original owner's request.
- c) The BOARD may approve transfer of capacity from one project to another and one owner to another, provided the new project and owner meet all the requirements for the final connection approval originally issued, and the original owner requests such transfer.

11. Authority to Require Connection

Nothing herein shall be construed as limiting or impairing the authority of the Town of Stowe or its BOARD to require connections to the PLANT and SEWERS under the general laws of the state or local ordinances.

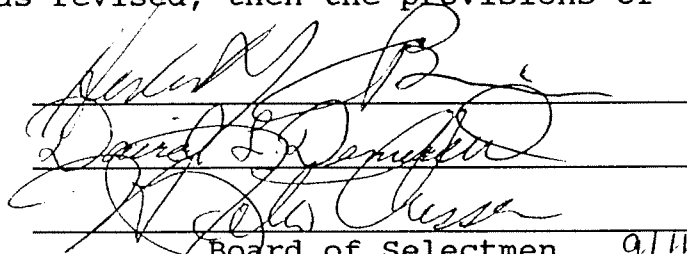
12. Violation of Connection Permit

The BOARD may issue lawful orders for disconnection from the PLANT and SEWERS upon its determination that such connection:

- a) is causing a violation of the Town of Stowe's discharge permit; or
- b) is causing a nuisance or health hazard; or
- c) is causing damage to the PLANT or SEWERS; or
- d) is in violation of any other ordinance, bylaw or enactment of the Town of Stowe relating to the ownership, operation and management of public or private sewers; or
- e) is the subject of delinquent sewerage charges or benefit assessments.

13. Adoption of Ordinance

This ordinance shall become effective at midnight, October 2, 1989. To the extent that any provision herein shall be inconsistent with or contrary to any provision of the Town of Stowe's Sewer Use Ordinance as revised, then the provisions of this ordinance shall apply.

  
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Board of Selectmen 9/11/89

Dated at Stowe, Vermont this 11th day of September, 1989.

First Reading: 8/28/89  
Passage: 8/28/89  
Publication Dates: 8/31/89 & 9/7/89  
Second Reading: 9/11/89  
Public Hearing: 9/11/89  
Final Pasage: 9/11/89

Filed and Recorded this 12th day of September A.D., 1989.

Attest:   
Town Clerk