

CITY OF AUBURN PLANNING BOARD

APPLICATION OF THE LEWISTON-AUBURN WATER POLLUTION

CONTROL AUTHORITY FOR ~~SITE PLAN APPROVAL AND SPECIAL~~

~~EXCEPTIONS PERMIT TO APPROVAL OF CONTINUED OPERATION OF CONSTRUCT~~ A MUNICIPAL WASTE
WATER

SLUDGE COMPOSTING FACILITY.

The Planning Board approves the application of the Lewiston-Auburn Water

Pollution Control Authority (“LAWPCA” or “Applicant”) for ~~a Special Exceptions~~

~~Approval and Site Plan Review Approval to continue operations under modified conditions and~~
~~parameters~~ under the Auburn Zoning Ordinance. After review of

the LAWPCA Application, and after notice and hearing as required under the

Ordinance, the Planning Board makes the following findings of fact and conclusions of

law in support of its decision.

PROCEDURAL HISTORY

On February 10, 1992 LAWPCA submitted a complete written application for

Site Plan Approval and a Special Exception Permit to construct a Municipal Waste

Water Sludge Composting Facility on Penley Corner Road in Auburn. After

appropriate notice, the Planning Board held a public hearing on the application on

March 10, and continued the proceeding for additional public hearings, Board

deliberations, and decision on the following dates: March 12, March 23, and April 2,

1992.

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~~SPECIAL EXCEPTION APPROVAL~~

The ~~proposed~~ Penley Corner Road ~~location for the~~ sludge composting facility lies wholly within an area designated by the Auburn Zoning Ordinance as an “Agriculture and Resource Protection District.” Article 3.31 of the Auburn Zoning Ordinance provides that permitted uses within this zone include farms, plant and tree nurseries, greenhouses, the handling, storage and sale of agricultural products grown on the premises, livestock operations and wayside stands. Special Exception uses approved for the zone include sawmills, veterinary hospitals, handling, storage and sale of agricultural services, municipal sanitary landfills, wholesale nurseries, and municipal waste water sewerage sludge composting facilities.

The Planning Board ~~has~~ reviewed the LAWPCA application, public hearing testimony and exhibits, as well as the February 27, 1992 Planning Board Report Submitted by Planning Board Staff and independent consultants, E.A.

Environmental/EMCOM, Inc. Based upon this review, the Board ~~finds~~found that the proposed sludge composting facility ~~wi~~ll be in harmony with the expressed intent of the Zoning Ordinance and with the major purposes of the Auburn Master Development Plan as required by Chapter 29, Article 7.2 of the Auburn Zoning Ordinance. The

Board ~~finds~~ further found that pursuant to Article 7.2 that the proposed use ~~wi~~ll substantially serve the public convenience and welfare of all Auburn residents, and will not involve

dangers to health or safety. The Board finds that in this year, 2020, the facility has operated for many years with little or no detrimental effect to residents in the general area of the facility. The Board finds after review of the facility, its operational history, and changed circumstances since the original approval of the facility that a new approval for the facility is warranted. The Board further notes that as a voting member of the Lewiston-Auburn Water Pollution Control Authority Board of Directors, the Auburn City Manager or the Manager’s designee is in a unique position to monitor the activities of the LAWPCA and its compost facility in the best interests of Auburn citizens.

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The Board makes the following findings:

~~The Board makes the following findings concerning the prerequisite conditions for Special Exception approval set forth in Article 7.2.B.1.a through g of the Zoning~~

Ordinance:

a. The proposed sludge composting facility fulfills the specific requirements set forth in the Zoning Ordinance for the “Processing and Storage of Compost and Bulking Agents” from the Municipal Waste Water Sewerage Sludge Facility, set forth in Section 3.31.B.2.1. The Board finds specifically that the proposed use fulfills the three criteria for such compost facilities:

1. The site plan shows that all compost and amendment materials will be stored inside or under a roof. In addition, the Operations Plan (LAWPCA application Exhibit 18) states that there will be no outdoor storage.

21. All plans presented to the Planning Board are in full compliance with all applicable federal, state and local ordinances. No federal permits are required for operation of the facility and appropriate State permits have been obtained by the Lewiston-Auburn Water Pollution Control Authority. However, federal and state regulations will govern use of the compost product.

Applicant is seeking the necessary state Site Location of Development permit. The local ordinance provisions are satisfied by the project as conditioned in this decision.

23. Applicant has demonstrated the ability to operate the facility and make a product which is beneficial to the community and affirms that the Lewiston-Auburn Water Pollution Control Authority will submit, for approval by the City, an end use plan upon the event that the facility is no longer to be operated. submitted an End-Use Plan to the Board which satisfies the requirements of the Ordinance. Applicant also will be required to submit updated End-Use Plans consistent with the experience at the facility pursuant to Article IX of the Siting of Composting Facility Agreement (“Agreement”) between the City of Auburn and LAWPCA.

b.3. The Board finds that the proposed composting facility would neither create

nor aggravate a traffic hazard, a fire hazard or any other safety hazard.

4.

~~The applicant has submitted a Traffic Impact Analysis which indicates the current traffic levels on Route 136 and the Penley Corner Road will not be further aggravated by the development of this facility. Nevertheless, under the Agreement, LAWPCA has agreed to specific off-site improvements which will improve the functioning of the roadway and intersection as compared to pre-project conditions. At this time, the facility has not been designed to include an automatic fire suppression system or fire hydrant protection. Applicant will be required to provide for adequate well water supply or water storage capacity to meet Building Code requirements for fire suppression. A special condition has been added to address this requirement.~~

~~No other safety hazards have been identified.~~

~~c. The Board finds that the Special Exception continued operation of the facility under the limitations and modifications as sought/proposed will not block or~~

hamper the Master Development plan pattern of highway circulation or of planned major public or semi-public land acquisition. Neither the City of Auburn nor any quasi-public local entity has expressed any intention of acquiring land on or in the immediate vicinity of this parcel. The City is also unaware of any plans to extend or create new highways within the proposed development area.

~~d. The Board finds that the Special Exception operating facility proposed use will/has not altered the essential characteristics of the neighborhood and will/has not tend to depreciate/negatively the affected the value of~~

property adjoining and neighboring the property under application.

5.

The composting facility is ~~proposed to be~~ located in the Agriculture and Resource Protection District of Auburn. This District is classified as a Resource District rather than a Residential District, reflecting the City's goal of maintaining its agricultural base to the maximum extent possible. To that end, no new residences are allowed in this District except those associated with substantial on-site agricultural or forest-based activities. This minimizes the potential for future residential use conflicts for the ~~proposed sludge compost~~ facility.

The ~~proposed~~ compost facility ~~will~~ consume only a small portion of the active agricultural land on the Gauthier Farm. Pursuant to the Agreement between Mr. Gauthier and the applicant, Mr. Gauthier is obligated to continue agricultural use of the property as part of his life tenancy. ~~In the event he decides to discontinue active agricultural use.~~ Thus, the project will preserve the essential agriculture characteristics of the neighborhood.

~~Based upon a report generated by the City of Auburn's tax assessor, set forth in the Planning Board Report dated March 6, 1992, and testimony offered at the public hearing, the Planning Board finds that the proposed project will not tend to depreciate the value of the property adjoining and neighboring the property under application.~~

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~~First, the Board finds that as conditioned in this decision, the proposed project will have no unreasonable net effect on the assessed value of adjoining or neighboring property. The tax assessor for the City of Auburn has confirmed that experience in other communities indicates that market prices are not affected in the long term by this type of facility. He also indicated that there is no discernible difference between any short-term property value impacts that might be associated with such a sludge composting facility from those associated with a full-scale farming operation (permitted use) or sawmill (special exception use) in this agricultural zone.~~

~~Second, the Board finds that, as conditioned in this decision, the proposed sludge~~

~~composting facility will not have any unique or distinctive characteristics that would cause any greater short or long term property devaluation than another municipal waste water sewerage sludge facility, or with other permitted or special exception uses allowed within the District. This project would not have any greater impact on property values due to odor, noise, or traffic than permitted farm activities on the same site, which could include sludge or manure spreading on croplands, composting, sale of produce at wayside stands, or even large scale livestock operations, such as poultry or hog farms. The project would not have any greater property value~~

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~~impact than any other special exception use approved for the zone, including sawmills or municipal landfills.~~

e6. Reasonable provisions have been made for the criteria listed in Article

7.2.B.1.e, including adequate lot area, drainage, road access, parking, landscaping, building separation, and sewerage disposal.

~~The plan is deficient in a minor area involving driveway layout for fire safety as noted in the Fire Department's comments. To remedy this deficiency, a special condition will require that the driveway be extended to include a gravel road to the westerly corner of the facility, consistent with Fire Department recommendations. A special condition has also been added to assure that an adequate water supply for both composting operations and fire suppression. Exhibit 9, Water Supply, of LAWPCA's State Site Location of Development permit application, states that peak water usage is expected to be 20 gallons per minute during the weekly plant washdown. Testimony at the public hearing indicated that LAWPCA might face higher water demands if significant quantities of water had to be used in operation of the biofilter. LAWPCA indicated at the hearing that additional private wells on the property could handle the demand, but that a special storage tank might be installed for fire suppression water supplies. A special condition has been included to assure that fire~~

~~suppression and operational water supplies are adequate.~~

87.

f. The standards imposed are, in all cases, at least as stringent as those elsewhere imposed by the Auburn Building Code and by the provisions of this Chapter.

~~As indicated previously, special conditions have been imposed to assure that an automatic fire suppression system will be installed, supplied by an adequate water source, to meet the Building Code requirements.~~

The Board notes that ~~the proposed use~~ composting complies with the Environmental Compliance Standards of Chapter 29, Article 5.6 of the Ordinance, specifically the noise and odor provisions.

The Board finds that the Agricultural and Resource Protection District is properly considered a “light industrial/industrial zone” for purposes of determining the maximum permitted sound level under Ordinance Articles 5.6.C.3 and .4. This category is the most compatible with the goals and purposes of the Agriculture and Resource Protection District, assuring that there will be sufficient latitude to allow new farming activities and compatible special exception uses to be developed within the District. LAWPCA’s application makes clear that the 70 dBA noise limit, as modified by the intermittent noise provisions of 5.6.C.4, will be met by the proposed facility. Over the course of many years of operation, LAWPCA has never received a complaint concerning noise from the facility.

The Board finds that the proposed project, as conditioned by this decision, ~~and as limited by Article IX of the Agreement,~~ will not have any significant or unreasonable odor impact on adjoining properties. A reasonable reading of Article 5.6.E, consistent with the goals and objectives of the

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Ordinance, leads to the conclusion that a new non-residential use must not have a

significant or unreasonable impact on surrounding properties, even though some odors may from time to time be detectable at property lines. A stricter reading of these Ordinance provisions could halt new farm or other non-residential development altogether in the City, a result certainly not intended by the City Council in creating the ordinance standard. The Board's reading is consistent with the odor control provisions of the Site Location of Development Act regulations (Department of Environmental Protection Regulations Chapter 373.4), the standards which the Council sought to satisfy in order to gain DEP approval as a delegated municipal approval authority under 38 M.R.S.A. §489-A when the Ordinance Article 5.6 provisions were adopted.

Therefore, properly read, the Board finds that the provisions of Article 5.6.E are satisfied by the ~~strict special~~ conditions concerning odor imposed upon the project.

~~g. The central City Services which will be required for the project are presently available or can be made available without disrupting the City's Master Development Plan. Provided that applicant supplies an acceptable alternative means of water supply for fire suppression, all essential City services required for the project are presently available to the site.~~

In sum, the Planning Board finds that all criteria for approval of a Special Exception as set forth in Article 3.31.B.2 and 7.2.B.1.a – g have been satisfied.

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SITE PLAN APPROVAL

The Planning Board finds that LAWPCA also ~~has~~ satisfied all Site Plan Review criteria set forth in Article 7.1. The applicant ~~has~~ submitted the necessary Site Plan review application and supporting documents required under 7.1.D.1 and 2. Applicant has demonstrated that the proposed project will constitute a suitable development and will not result in detriment to the City, neighborhood or the environment, as required by Articles 7.1.A and 7.1.D.5 The Board finds further that none of the reasons for denial

of an application listed in 7.1.D.5.a – i are applicable. The Board finds that the

~~proposed project facility as operated and, as~~ conditioned, fulfills all the objectives set forth in 7.1.B.1 – 4, as

detailed further by the specific factual findings in the Special Exception Use section above.

1. Protection of adjacent areas against detrimental uses on the site

A. Surface water drainage

~~The applicant LAWPCA~~ has made provisions for the containment of surface water runoff by the establishment of ~~a~~ detention ponds. ~~Theis~~ detention ponds ~~hasve~~ been sized in accordance with Chapter 32 of the Auburn Ordinance and ~~isare~~ determined to be adequate to contain surface water runoff.

B. Buffers against artificial and reflected light

The facility is ~~proposed for~~ locat~~ed~~ien on 10 acres in the middle of a 116 acre site.

All outdoor lighting is ~~proposed to be~~ directed down so that light and glare are not shed outside

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of the project site. ~~The use of o~~Outdoor lighting ~~willis~~ only ~~be used~~ during hours of operation and, therefore, ~~areis~~ designed not to be a detriment or nuisance to adjacent properties.

C. Sight

This site is located on the backside of a knoll located in the middle of the property. Locating the facility in this way and the further buffering of the building by

the ~~construction of a~~ bio-filter on the street side will tend to reduce any visual impact. Although the biofilter is no longer in use and has been closed and capped in compliance with Maine Department of Environmental Protection Rules, the closed biofilter continues to provide this visual buffering function.

~~The applicant has submitted a landscape plan which shows the introduction of LAWPCA also planted~~
trees and

other vegetation which ~~will offer~~ provides additional site buffering.

D. Sound

~~The applicant has provided a noise study that indicates that there will be minimal increased noise levels from the proposed facility. LAWPCA has operated the facility for many years without noise issues.~~ The only equipment that ~~will be~~ is used

outside is a front-end loader, for periods totaling ~~only~~ about one and one-half hours per day. This type of equipment is used currently in the surrounding farm areas.

E. Dust

There ~~will~~ has not ~~been~~ any significant increase in dust levels due to the project, given the paved road and gravel area design, and prohibition against on-site amendment reduction.

F. Vibration

There ~~will~~ has not ~~been~~ any significant vibration associated with the operation of the facility.

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G. Preservation of Light and Air

This criterion is applied when structures are being built in a very dense pattern, in order to assure that healthful conditions exist between buildings (i.e. setbacks). This is not a concern at this 116 acre project site.

2. Vehicular and pedestrian movement

The applicant ~~has~~ submitted a site plan which ~~has been~~ was reviewed by both the Police and Fire Departments. Neither Department ~~has~~ stated any major concerns with the project. ~~A minor concern regarding the access for fire vehicles will be addressed~~

~~through a special condition in this decision.~~ Off-site considerations ~~aw~~ere limited to the impact of the additional traffic on Penley Corner Road and Riverside Drive, and, as indicated previously, applicant ~~has agreed to completed~~ off-site improvements through its Agreement with the City of Auburn that ~~will actually improved current~~ road conditions.

3. Waste disposal

The solid waste generated at this facility will be taken care of by three methods of disposal: (1) All general office wastes that are generated at the facility will disposed of in a manner consistent with other businesses by utilizing the Mid Maine Waste Action Corporation's facility on Goldthwaite Road; (2) Any debris that cannot be handled at the MMWAC facility will be disposed of ~~in the City of Auburn landfill located on Gracelawn Road or~~ at another licensed landfill; (3) Any residual waste water created at the facility is ~~proposed to be~~ stored in a holding tank located on the site. The holding tank

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~~will be is~~ periodically pumped and the waters taken to the LAWPCA wastewater treatment plant in Lewiston facility for proper treatment. Domestic sanitary waste water ~~will be is~~ treated on site utilizing a subsurface waste water disposal system.

4. Protection of the environment features on the site and in adjacent areas

~~The applicant LAWPCA~~ has taken steps to protect all environmental features on the site.

This includes the identification and buffering of wetlands from development; the development and design of ~~a~~ detention ponds to adequately collect all surface runoff

waters ~~as a resulting from of~~ the development; and ~~the commitment to the~~ in cooperation with Mr. Gauthier, has ~~continuedance of~~

farming activities on the site. Noting that the facility is ~~proposed to be~~ located in the middle of a 116 acre site, there are no environmental features on adjacent lands that have been or are likely to be impacted.

Based upon these findings of fact and conclusions of law, the Planning Board approves the LAWPCA ~~application for approval of~~ Special Exception Use of the Penley Road site as a Municipal Waste Water Sewerage Sludge Facility under Article 3.31.B.2, and also approves the Site Plan under Article 7.1 and 7.2, subject to the following special conditions:

SPECIAL CONDITIONS

~~A. On or before May 1, 1992, LAWPCA shall submit letters to the Planning Board the City of Auburn and MMWAC to show that both the landfill and the~~

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~~incineration plant have the capacity to accept any non-composting waste generated at the sludge composting facility. If the landfill and the incineration plant do not have the capacity to accept any non-composting waste generated at the sludge composting facility, LAWPCA shall submit letters from alternative disposal facilities stating that such disposal capacity is available.~~

~~B. On or before July 1, 1992, LAWPCA shall submit to the Planning Board for its review and approval, with or without conditions, a plan demonstrating that an adequate water supply can be obtained for the operation and maintenance of the sludge composting facility, as well as the fire suppression systems required by the Building Code. Approval of this plan by the Planning Board shall be required before any building permit may be issued to the facility.~~

~~C. LAWPCA shall design the facility in a manner consistent with the preliminary Plan of Operation submitted to the Planning Board in the Site Plan Review Application. At least 60 days prior to commencement of operations, LAWPCA shall submit to the Planning Board, for its review and approval, with or without conditions, a final Plan of Operation meeting all~~

~~criteria of Article VIII, Section 1 of the Siting of Sludge Composting Facility Agreement between LAWPCA and the City of Auburn dated February, 1992. The~~

~~15~~On or before September 30, 2020 LAWPCA shall submit to the Auburn City Manager for approval and consultation with the Planning Board, a plan of operations that will document any changes to the operation of the facility from its original designed operation.

~~sludge composting facility shall be operated as described in the Plan of Operation approved by the Planning Board.~~

~~D. At least 60 days prior to commencement of operations, LAWPCA shall submit to the Planning Board for its review and approval, with or without conditions, a final Marketing and Distribution Plan that includes provisions for seasonal storage of compost off the Gauthier Farm site, such that no compost will be stored outside the curing building. A minimum of six months off-site storage for compost shall be provided in the Plan for the period of November through April.~~

~~E. LAWPCA shall deactivate the sludge composting facility in accordance with the End Use Plan dated March 13, 1992. In the event that LAWPCA decides or is required by a governmental entity having jurisdiction to cease operation of the facility, it shall deliver to the Auburn City Manager for approval by the Planning Board, a plan for deactivation of the facility. The plan will include future use or demolition of the buildings and structures, disposal of any waste materials on the site including but not limited to sewerage sludges, compost, amendment materials, equipment and vehicles.~~

~~F. F. LAWPCA shall conduct any emergency backup procedures at the facility in accordance with the Emergency Backup Disposal Plan submitted to the Planning Board in this application.~~

~~G. LAWPCA shall be responsible for the construction of all off-site improvements as outlined in Article VIII of the Agreement between LAWPCA and the City of Auburn.~~

~~H. Prior to any construction of the sludge composting facility, LAWPCA shall design the driveway at the sludge composting facility to include a gravel driveway to~~

~~the westerly most corner of the curing building. Said driveway shall be approved by the Auburn Fire Chief.~~

~~I. Prior to any construction of the sludge composting facility, LAWPCA shall submit design details to the Planning Board for its review and approval, with or without~~

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~~condition, for the detention pond's emergency spillway and an explanation as to how the sedimentation trap will function during the construction period.~~

~~J. LAWPCA shall ensure that the design of the curing building provides for 40 days detention time at a maximum depth of eight feet. These are design requirements only, and shall not control actual operations. The curing building shall be equipped with an aeration system to provide negative aeration for all curing compost, consistent with the requirements of Article IX of the Agreement. Exhaust from the aeration system shall be treated in the biofilter.~~

~~K. Prior to commencement of operations, LAWPCA shall install a "Stop" sign at the intersection of the sludge composting facility access road and Penley's Corner Road.~~

~~L.G.~~ No amendment preparation (e.g. size reduction or metal separation) shall take place at the sludge composting facility. All amendment material at the sludge composting facility, including rejected materials, shall be stored inside the building. Any biosolids being temporarily stored at the facility prior to composting, land application or disposal shall be managed so as not to produce runoff or odors capable of impacting the surrounding properties or general environment, all materials shall be screened from the public way and abutting properties.

~~M.H.~~ The granting of this approval is dependent upon and limited to compliance with the proposals, plans and oral statements as submitted by or on behalf of LAWPCA to the Auburn City Council and the Auburn Planning Board.

~~N.I.~~ LAWPCA shall comply with the Agreement and all applicable federal, state, and local laws and requirements, including, but not limited to, licenses, permits, authorizations, conditions, agreements, and orders ~~prior to or~~ during ~~construction and~~

operation.

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~~O. If either construction of the sludge composting facility is not completed or operation of the sludge composting facility has not begun within five years from the date approval is granted by the Planning Board, the board may reexamine its approval and impose additional terms or conditions or prescribe other necessary corrective action to respond to changes in circumstances which may have occurred during the five year period.~~

~~P. LAWPCA shall pay the reasonable costs incurred by the City of Auburn or its Planning Board not to exceed \$15,000 to retain a consultant of its choice to advise the City or Board during the review, design, and construction of the proposed bio-filter and associated air handling system.~~

QJ. All trucks carrying sludge, amendment, or end product to and from the facility shall be covered and adequately sealed at all times traveling through the City of Auburn.

RK. ~~LAWPCA shall ensure that an odor control system is installed at the Facility which meets the following performance standards.~~ The facility shall operate in compliance with the following performance standards at all times:

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1. LAWPCA shall ensure that odor intensity measured at any dwelling or any public road shall not be more than 1.0 unit higher than background levels if the odor is characteristic of sludge, compost or the composting process and attributable to the composting operation. Odor intensity shall be measured on the butanol scale in accordance with ASTM E 544.

2. The odor control system discharge shall have an odor concentration not exceeding 100 units at ED50 as determined in accordance with ASTM E 679. All air spaces where sludge or non finished compost is stored, processed, transported or otherwise handled shall be considered air streams required to undergo odor control treatment. Air spaces where bulking agents are stored, processed, transported or otherwise handled, may be required to undergo odor control treatment.

Before the facility is constructed, LAWPCA will ensure that an

independent air emissions study is conducted at the site to establish baseline odor levels and to develop odor dispersion modeling. Background odor intensities shall be measured by the butanol scale at two time periods: at the time of spring sludge spreading when background odor intensity is highest; and at mid winter when odor intensity is minimum. During both time periods, odor intensity shall be measured during conditions of low atmospheric dispersion.

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Prior to the Commencement Date of Operations, a period of full scale operations, not to exceed sixty days, shall be conducted at the Facility to ensure that ED50 maximum value of

100 is achieved under normal operating procedures through use of the odor control system. LAWPCA must demonstrate to the Planning Board, through testing, that the ED50 maximum value of 100 is, and will continue to be, attained when the odor control system is functioning. The Commencement Date of Operations shall not occur until the Planning Board, after reviewing the demonstration made by LAWPCA, has approved operation of the odor control system, which approval shall not be unreasonably withheld.

~~After the Commencement Date of Operations, the odor control system discharge shall be monitored annually during the month of July using an odor panel (ASTM E 679). During periods of operation, at the request of the Auburn City Manager or the Auburn Planning Board, LAWPCA agrees to perform additional tests using either odor units at the point of discharge (ASTM # 679) or odor intensity testing at any dwelling or public road per (ASTM E 544.) may be requested at other times by the City Manager, or a City Councilor provided that the sum of all additional tests shall not exceed 12 per year, to ascertain whether the odor levels~~

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~~as specified in this Article, have been achieved. The City Manager or City Councilor shall not unreasonably request additional odor monitoring.~~

~~Recognizing the odor potential of any composting operation, LAWPCA agrees that only anaerobically digested sewage sludge from its treatment plant and amendment materials having little or no potential to generate odors (such as sawdust, wood shavings, wood ash and spent coffee grounds) will be composted at the facility unless material that is low in potential to produce odors and is approved in advance by the City of Auburn.~~

~~All studies, tests and monitoring required by this Article shall be conducted by independent laboratories agreed upon by LAWPCA and the City Manager. LAWPCA shall submit the results of any studies and testing required under this Article to the City Manager and the City Council. If the standards for odor control referred to in this Article are violated, LAWPCA will have 72 hours to comply and if unable to do so, will shut~~

~~down operations and cease bringing amendments to the site until such time as it can comply. If the facility must shut down more than 3 times in any 12_ month period, it will remain shut down until such time as it can comply. If the facility must shut down more than 3 times in any 12_ month period, it will remain shut down until such time as~~

LAWPCA demonstrates, to the satisfaction of the City Council, that continued operation of the Facility will not violate such odor control standards. In the event that the facility must be shut down due to odors, or for some other reason under agreement between the City of Auburn and LAWPCA, LAWPCA shall have ~~7~~30 days to complete removal of compost material and sludge unless an alternative schedule is agreed upon by the City Manager and LAWPCA in order to minimize odor impacts.

~~S. LAWPCA shall create a special board to advise LAWPCA with respect to noise, odor or any other operational issues of concern, as need requires. This board~~

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~~shall consist of at least two members from the neighborhood, two members from the Planning Board, and one City Councilor.~~

~~T. All road improvements along the Penley Corner Road shall be undertaken in such a way so as minimize disturbance of the property identified as the "Old School House", now the Charest residence.~~

2. LAWPCA shall not subcontract the operation of the Facility, or otherwise transfer responsibility for operating the Facility, without obtaining the consent of the Auburn City Council, which consent will not be unreasonably withheld. If LAWPCA desires to transfer operating responsibilities for the Facility, such transfer shall be subject to the Auburn City Council finding, prior to the transfer, that the proposed operator has adequate financial capacity to ensure the Facility will be operated in full compliance with this Agreement and to secure the payment of any cost or damage arising out of noncompliance. Such financial assurance may but is not required to include, without limitation and subject to the approval of the Auburn City Council, a performance bond, letter of credit or other form of liquid, third-party credit enhancement.

Approval by the Auburn City Council for the transfer shall also be conditioned upon the conclusion of a separate agreement between the City and LAWPCA regarding financial assurance, including but not limited to: (1) the amount and type of financial assurance mechanism; (2) the City's rights to receive payment under the mechanism; (3) actions by the private contractor which trigger the City's right to recover under the mechanism; and, (4) the period of time for which approval of the transfer is granted by the Auburn City Council.

Notwithstanding the transfer of operating responsibilities, LAWPCA acknowledges that it retains responsibility for operation of the Facility and for full compliance with this Agreement.

3. LAWPCA agrees that the Facility shall be operated in compliance with all state and federal laws and regulations and local ordinances, including the Environmental Performance Standards adopted by the City, and will not become a private or public nuisance as a result of noise, odor, fumes or otherwise. LAWPCA also agrees that the Facility shall be operated in such a manner that it will not violate any state, federal, or local health standard.

4. LAWPCA agrees that the Facility will be maintained in good repair including provision for an adequate reserve of any and all spare and replacement parts such that the Facility will be operated in accordance with the Agreement. The City shall have the right to enter the Site at reasonable times for the purpose of assuring that LAWPCA is complying with the terms of this Agreement.

5. LAWPCA shall defend, indemnify and hold harmless the City and its respective officials, agents and employees (the "City employees") from and against all losses, costs, damages and expenses (including reasonable attorneys' fees) incurred by the City or the City employees arising out of any claim, action, demand or liability threatened or asserted against the City or the City employees relating in any way to the Facility including, without limitation, the design, construction, maintenance or operation of

the Facility or the transportation of the Sludge, the Bulking Agents or the composted material. LAWPCA specifically agrees to defend and indemnify the City and the City employees from any claims brought against them by employees of LAWPCA or employees of any subcontractor of LAWPCA for injuries allegedly suffered during the course of their employment. Provided, nevertheless, that to the extent such injury is caused by any willful or negligent act or omission by the City, LAWPCA shall have a right of contribution against the City

BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns.

OTHER DOCUMENTS

Each party promises and agrees to execute and deliver any instruments and to perform any acts which may be necessary or reasonably required in order to give full effect to this Agreement.

SEVERABILITY

In the event any covenant, condition or provision of this Agreement is held to be invalid or unenforceable by a final judgment of a court of competent jurisdiction, or by any other tribunal, board, or other entity, the decision of which is binding upon the parties and which becomes final, such invalidity or unenforceability shall in no way affect any of the other covenants, conditions or provisions of this Agreement.

APPLICABLE LAW

The laws of the State of Maine shall govern the validity, interpretation, and performance of this Agreement.

AMENDMENT OF AGREEMENT

No amendment to this Agreement may be made unless it is in writing and signed by both parties.

NONDISCRIMINATION

The parties agree that the terms of this Agreement will be performed in a manner which allows equal opportunity and which shall not discriminate on the basis of age, race, religion, color, creed, sex, sexual preference, disability, financial status or national origin: (a) in the persons served or in the manner of service; or (b) in the hiring, assignment, promotion, salary determination or other conditions of employment.

NOTICE

All notices required or permitted to be given or furnished under this Agreement by either party to the other shall be in writing and shall be deemed sufficiently given and served upon the other party if hand delivered or sent postage prepaid, addressed as follows: if to the City: City Manager, 60 Court Street, Auburn, Maine 04210; if to LAWPCA: Superintendent, P.O. Box 1928, Lewiston, Maine 04241.

Said notice shall be deemed given when mailed. By notice given in conformity with this article, each party shall have the right, from time to time, to designate a different person or address to whom or to which notice shall be given.

ARBITRATION

Any dispute arising under this Agreement shall be resolved by arbitration in accordance with the rules of the American Arbitration Association. The arbitration proceeding shall be held in Auburn, Maine and each party shall pay its own costs of the proceeding plus one half the costs and charges of the arbitrators.

ENTIRE AGREEMENT

This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior understandings and Agreements between the parties, and may be altered or amended only by a writing signed by the parties.

DATED: APRIL 3, 1992 _____

Robert Hayes, Chairman

Auburn Planning Board