

TAMWORTH GROUNDWATER PROTECTION ORDINANCE

I. AUTHORITY

The Town of Tamworth hereby adopts this ordinance pursuant to the authority granted under RSA 674:16, in particular RSA 674:16, II relative to innovative land use controls.

II. PURPOSE

The purpose of this ordinance is, in the interest of public health, safety, and general welfare, to preserve, maintain, and protect from contamination existing and potential groundwater supply areas and to protect surface waters that are fed by groundwater.

The purpose is to be accomplished by regulating land uses which could contribute pollutants to designated wells and aquifers identified as being needed for present and/or future public water supply.

III. GROUNDWATER PROTECTION DISTRICT

The Groundwater Protection District is the area defined by:

(1) all of the NH Department of Environmental Services-approved Wellhead Protection Areas for community Public Water System supply wells as defined under APPENDIX A, Sections I., K., and R. of this ordinance;

and

(2) all areas overlying Stratified Drift Aquifers as described in *Geohydrology and Water Quality of Stratified Drift Aquifers in the Saco and Ossipee River Basins, East-Central New Hampshire*, USGS Water Resources Investigations Report 95-4182.

If the areas referenced in section (1) or section (2) are updated, the Planning Board may revise the map of the Groundwater Protection District after a public hearing.

The district is represented on the map entitled, "Town of Tamworth Groundwater Protection District," dated 01/12/11 or the most recently revised version.

IV. APPLICABILITY

This Ordinance applies to all uses in the Groundwater Protection District, except for those uses exempt under Article VIII of this Ordinance.

V. ALLOWABLE USES

All uses are allowed in the Groundwater Protection District unless they are Prohibited Uses listed in Article VII of this ordinance or uses prohibited in any

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underlying district. All uses must comply with the Performance Standards of Article X, unless specifically exempt under Article VIII.

VI. PRE-EXISTING NONCONFORMING USES

Any lawful use of the land or a building or part thereof at the time of the adoption of this ordinance may be continued, with normal repairs and maintenance permitted, although such use does not conform to the provisions of this ordinance, provided, however, that:

- 1) A non-conforming use shall not be changed to another non-conforming use;
- 2) A non-conforming use shall not be enlarged or expanded or made to be less conforming;
- 3) A non-conforming use which has been discontinued for two years shall not be resumed;
- 4) Any non-conforming use destroyed by fire or other natural disaster may be repaired, replaced, or resumed within two years, in accordance with Sections 1) and 2) of this Article; and
- 5) A non-conforming use must be in compliance with all applicable state and federal requirements, including Env-Wq 401, Best Management Practices for Groundwater Protection.

VII. PROHIBITED USES

The following uses are prohibited in the Groundwater Protection District:

- A. The development or operation of a hazardous waste disposal facility as defined under RSA 147-A;
- B. The development or operation of a solid waste landfill;
- C. The outdoor storage of road salt or other deicing chemicals in bulk;
- D. The development or operation of a junkyard;
- E. The development or operation of a wastewater or septage lagoon;
- F. The development or operation of a petroleum bulk plant or terminal; and
- G. The development or operation of service stations.

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VIII. EXEMPTIONS

The following uses are exempt from the specified provisions of this:

- A. Any private residence and residential activities are exempt from all Performance Standards listed in Article X and conditional uses in Article IX.;
- B. Any business or facility where regulated substances are stored in containers with a capacity of less than five gallons is exempt from Article X., Performance Standards C. through F.;
- C. Storage of heating fuels for on-site use or fuels for emergency electric generation, provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection, and secondary containment in place, is exempt from Performance Standard C.;
- D. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle is exempt from Performance Standards C. through F.;
- E. Storage and use of office supplies are exempt from Performance Standards C. through F.;
- F. Temporary storage of construction materials on a site where they are to be used is exempt from Performance Standards C. through F. if incorporated within the site development project within six months of their deposit on the site;
- G. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from all provisions of this ordinance;
- H. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Wm 401.03(b)(1) and 501.01(b), as may be amended from time to time, are exempt from Performance Standards C. through F.;
- I. Underground storage tank systems and aboveground storage tank systems that are in compliance with applicable state rules are exempt from inspections under Article XII of this ordinance.
- J. Agricultural activities as regulated by the NH Department of Agriculture, Markets, and Food under RSA 425-2, are exempt from Performance Standards B. through H. in Article X and Article IX.A., provided that such activities are conducted in accordance with Env-Wq 401, Best Management Practices for Groundwater Protection and Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire (NH Department of Agriculture, Markets, and Food, July 2008, or any subsequent revisions

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- K. Timber harvesting activities, as regulated under RSA 227-J, are exempt from all provisions of this ordinance.

IX. CONDITIONAL USES

The following uses in the Groundwater Protection District shall require a Conditional Use Permit.

- A. Storage, handling, and use of regulated substances in quantities exceeding 100 gallons or 800 pounds dry weight at any one time.

For any such use, a Spill Prevention, Control, and Countermeasure (SPCC) Plan shall be submitted. Selectmen or their designated agent shall determine whether the SPCC will prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, floods or fires that may cause large releases of regulated substances. The SPCC shall include:

- 1) A description of the physical layout and a facility diagram, including all surrounding surface waters, areas of stratified drift aquifer, and wellhead protection areas;
- 2) Contact list and phone numbers for the facility response coordinator, cleanup contractors, and all appropriate federal, state, and local agencies who must be contacted in case of a release to the environment;
- 3) A list of all regulated substances in use and locations of use and storage;
- 4) A prediction of the direction, rate of flow, and total quantity of regulated substance that could be released where experience indicates a potential for equipment failure; and
- 5) A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground.

In granting approval for conditional uses, the Planning Board must first determine that the proposed use meets the purposes of the Ordinance, as stated in Article II.; is not a Prohibited Use listed in Article VII.; will be in compliance with the Performance Standards listed in Article X., as well as all applicable local, state, and federal requirements; and will not adversely affect groundwater resources in the Town of Tamworth.

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X. PERFORMANCE STANDARDS

The following Performance Standards apply to all uses in the Groundwater Protection District, unless exempt under Article VIII.:

- A. Animal manures, fertilizers, and compost must be stored in accordance with *Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire* (NH Department of Agriculture, Markets, and Food, July 2008 or any subsequent revisions);
- B. All regulated substances stored in containers with a capacity of five gallons or more must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains;
- C. Facilities where regulated substances are stored must be secured against unauthorized entry by means of a door and/or gate that is locked when authorized personnel are not present and must be inspected weekly by the facility owner;
- D. Outdoor storage areas for regulated substances, associated material, or waste must be located in secondary containment areas, protected from exposure to precipitation, and must be located at least 50 feet from surface water or storm drains, at least 75 feet from private wells, and outside the sanitary protective radius of wells used by public water systems;
- E. Secondary containment must be provided for outdoor storage of regulated substances in regulated containers, and the secondary containment structure must include impervious surfaces, a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s), and must be designed in accordance with the definition under APPENDIX A.;
- F. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed and vented where appropriate when material is not being transferred from one container to another;
- G. Prior to any land disturbing activities, all inactive wells on the property, not in use or properly maintained at the time the plan is submitted, shall be considered abandoned and must be sealed in accordance with We 604 of the New Hampshire Water Well Board Rules;
- H. Blasting activities shall be planned and conducted to minimize groundwater contamination. Excavation activities should be planned and conducted to minimize adverse impacts to hydrology and the dewatering of nearby drinking water supply wells; and

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XI. RELATIONSHIP BETWEEN STATE AND LOCAL REQUIREMENTS

Where both the State and the municipality have existing requirements the more stringent shall govern.

XII. MAINTENANCE AND INSPECTION

- A. Inspections may be required to verify compliance with Performance Standards. Such inspections shall be performed by the Board of Selectmen's designated agent or the Health Officer, at reasonable times with prior notice to the landowner.
- B. All properties in the Groundwater Protection District known to the Board of Selectmen's designated agent or the Health Officer as using or storing regulated substances in containers with a capacity of five gallons or more, except for facilities where all regulated substances storage is exempt from this Ordinance under Article VIII., shall be subject to inspections under this Article.

XIII. ADMINISTRATION, ENFORCEMENT PROCEDURES AND PENALTIES

The Planning Board is hereby authorized and empowered to promulgate such rules as are necessary for the efficient administration and enforcement of this ordinance.

Upon acceptance of an application for uses requiring Planning Board approval, the Planning Board shall transmit one copy, furnished by the applicant, to the Conservation Commission and Health Officer for their written recommendations. Failure to respond within thirty days shall indicate approval by said agencies.

The Planning Board shall consult with the Board of Selectmen or their agent for their written recommendations and approval of any required Spill Prevention, Control, and Countermeasure Plan.

Substantial construction must commence within one year of Planning Board approval of a Conditional Use Permit or it shall be null and void.

For uses requiring Planning Board approval, including a Conditional Use Permit, a narrative description of maintenance requirements for structures required to comply with Performance Standards of Article X. shall be recorded at the Carroll County Registry of Deeds so as to run with the land on which such structures are located. The description so prepared shall comply with the requirements of RSA 478:4-a.

The Planning Board may, at its discretion, require a performance guarantee or bond to be posted, in an amount and with surety conditions satisfactory to the Board, to ensure compliance with all requirements of a Conditional Use Permit.

A fee of \$100 shall be paid for each application submitted to the Planning Board seeking approval under this Ordinance. Thereafter, the Planning Board may amend

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the fee following a public hearing with not less than 10 days' notice in a newspaper of general circulation in the Town, and posting in at least 2 public places, including the place where the public hearing will be held. The applicant will be required to reimburse the Town for any reasonable expenses incurred by the Planning Board, Selectmen, and/or their designated agents to evaluate the application before the facility is constructed and to monitor the facility after construction.

Any violation of the requirements of this ordinance shall be subject to the enforcement procedures and penalties detailed in RSA 676 or RSA 485-C. The Board of Selectmen or their designated agent, and the Health Officer, shall have the authority to enforce any provision of this Ordinance in the interest of public health and safety.

Any person aggrieved by a decision by the Planning Board or Board of Selectmen regarding the construction, interpretation, or application of the terms of this Ordinance may appeal the decision to the superior court as provided by RSA 677:15 or as otherwise provided by law.

XIV – Board of Adjustment

A. Powers and duties

The Board of Adjustment is hereby authorized and empowered to adopt such rules of organization and procedure as are necessary for the efficient administration and enforcement of this chapter. In addition, the Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged that there is error in any decision made by an administrative officer as provided for in RSA 674:33, I(a).
2. To hear and decide special exceptions to the terms of this chapter upon which the Board is required to pass under this chapter as provided for in RSA 674:33, IV.
3. Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance 673:33, I(b)
4. To hear and decide applications for equitable waiver of dimensional requirements as provided for in RSA 674:33-a.
5. Any other powers authorized by New Hampshire's Planning and Zoning Enabling Statutes.

B. Appeals to Board

Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer, department, board, or bureau of the town affected by any decision of the administrative officer, in the manner prescribed by RSA 676:5, as amended. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the administrative officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The administrative officer shall transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

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C. Notice of hearing

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal in accordance with RSA 676:7, give public notice thereof, as well as notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or attorney.

D. Appeals to Superior Court

Within thirty (30) days after any decision of the Board of Adjustment, any party to the proceedings or any person directly affected thereby may apply for rehearing. The Board of Adjustment shall grant or deny the same within thirty (30) days. Within thirty (30) days after the final decision of the Board of Adjustment, an appeal may be taken to the Superior Court by any person aggrieved by the decision.

E. Special Exceptions

The Board shall have the power to hear and decide on applications for special exception. In applying for a special exception, the applicant need not demonstrate hardship, since the basis for the action is of general benefit to the town as a whole. In granting a special exception, the Board, with due regard to the nature and condition of all adjacent structures and uses, shall find all of the following general conditions to be fulfilled:

1. The requested use is essential or desirable to the public convenience or welfare.
2. The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.
3. The requested use will not overload any public water, drainage or sewerage system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the town will be unduly subjected to hazards affecting health, safety, or the general welfare.

F. Variances

1. The Board of Adjustment may authorize a variance from the terms of this chapter for:
 - a. A particular use.
 - b. A parcel of land.
 - c. An existing/proposed building.
2. In granting variances, the Board, if it deems it proper to the carrying out of the intent and purpose of this chapter, may impose such reasonable and additional stipulations and conditions as will, in its judgment, better fulfill the purpose of the chapter.

G. Duration of Approval

1. All variances and special exceptions granted by the Board of Adjustment shall be valid for a period of two (2) years after the date of the decision of the Board of Adjustment; provided, however, that once substantial compliance with said decision has occurred or substantial completion of the improvements allowed by said decision has occurred, the rights of the

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owner or his successor in interest shall vest and no subsequent changes in subdivision regulations or zoning ordinances shall operate to affect such decision. In the event that at the expiration of such two-year period substantial compliance with said decision or substantial completion of the improvements allowed by said decision has not been undertaken, said decision shall be null and void.

2. Upon request, submitted prior to the date of the expiration, the Board of Adjustment may extend the period of validity for one (1) additional year, provided the applicant can demonstrate that good faith efforts have been made to commence the use, or that the delay was beyond the applicant's control, and that the circumstances relating to the property and the surrounding neighborhood have not changed substantially since the date of the original decision. If the use is not commenced within this extension period, the approval shall be considered null and void and the applicant must reapply to the Board.

XV. SAVING CLAUSE

If any provision of this ordinance is found to be unenforceable, such provision shall be considered separable and shall not be construed to invalidate the remainder of the ordinance.

XVI. EFFECTIVE DATE

This ordinance shall be effective upon adoption by the legislative body.

APPENDIX A. DEFINITIONS

- A. **Aquifer:** a geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.
- B. **Groundwater:** subsurface water that occurs beneath the water table in soils and geologic formations.
- C. **Impervious surface:** a surface through which regulated substances cannot pass when spilled. An impervious surface includes but is not limited to concrete provided no unsealed cracks or holes are present. An earthen, wooden, or gravel surface or other surface, which could react with or dissolve when in contact with the substances stored on them, is not considered an impervious surface.
- D. **Junkyard:** an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automotive recycling yard. The word does not include any motor vehicle dealers registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126.

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- E. **Outdoor storage:** storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.
- F. **Petroleum bulk plant or terminal:** means that portion of the property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline tank car, tank vehicle, portable tank, or container.
- G. **Positive Limiting Barrier:** A depression (e.g., groove) in the area of an otherwise level impervious surface designed to impede the flow of and contain spilled substances within the perimeter of the impervious surface. These are typically constructed and maintained to contain small spills or releases (five to fifteen gallons).
- H. **Private Residence:** A building, dwelling unit, or property used for human habitation, whether seasonal or permanent, and where no commercial or industrial use occurs.
- I. **Public water system:** a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.
- J. **Regulated substance:** petroleum, petroleum products, and substances listed under 40 CFR 302, as may be updated from time to time, excluding the following substances: (1) ammonia, (2) sodium hypochlorite, (3) sodium hydroxide, (4) acetic acid, (5) sulfuric acid, (6) potassium hydroxide, (7) potassium permanganate, and (8) propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure.
- K. **Sanitary protective radius:** The area around a public water supply well which must be maintained in its natural state as required by Env-Dw 301 or 302 (for community water systems); Env-Ws 372.14 and Env-Ws 373.12 (for other public water systems).
- L. **Seasonal high water table:** The depth from the mineral soil surface to the upper most soil horizon that contains 2% or more distinct or prominent redoximorphic features that increase in percentage with increasing depth as determined by a licensed Hydrogeologist, Soil Scientist, Wetlands Scientist, Engineer, or other qualified professional approved by the Planning Board.
- M. **Secondary containment:** a covered structure such as a berm or dike with an impervious surface which is adequate to hold at least 110 percent of the volume of the largest regulated-substances container that will be stored there.
- N. **Service Station:** that portion of a property where petroleum and/or agricultural-based products are stored in bulk and sold for use in internal

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combustion engines (i.e. motor vehicles, lawnmowers, etc.) or stationary or portable heating devices (kerosene heaters, residential or commercial furnaces, etc.).

- O. **Source control plan:** A plan designed to: 1. minimize the volume of stormwater coming into contact with regulated substances, and 2. segregate relatively clean stormwater from stormwater with a higher concentration of pollutants. For further details see NH DES Alteration of Terrain Rule Env-Wq 1504.07.
- P. **Stratified-drift aquifer:** A geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial melt water, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.
- Q. **Surface water:** streams, lakes, ponds, and tidal waters, including marshes, water-courses, and other bodies of water, natural or artificial.
- R. **Wellhead protection area:** The surface and subsurface area surrounding a water well or wellfield supplying a community public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.