

GROUNDWATER PROTECTION ORDINANCE

**for the Town of
Tamworth, New Hampshire**

Effective Date January 1, 2024; Adopted on March 14, 2023

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I. AUTHORITY

The Town of Tamworth hereby adopts this ordinance pursuant to the authority granted under RSA 674:16 as an Innovative Land Use Control pursuant to RSA 674:21. This ordinance shall be administered, including the granting of conditional use permits, by the Planning Board.

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/or aquifers identified as being needed for present and/or future public water supply.

III. DEFINITIONS

Aquifer: a geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.

Commercial: The activity embracing all forms of the purchase or sale of goods and services, including retail, wholesale, services, office, industrial, nonprofit, and others. Excluded are agriculture and forestry

Groundwater: subsurface water that occurs beneath the water table in soils and geologic formations.

Gasoline station: means that portion of a property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and distributed for the purposes of retail sale of gasoline.

Impervious: not readily permitting the infiltration of water.

Impervious surface: a surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Earthen; wooden, or gravel surfaces; or other surfaces which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces. For temporary, short-term operations, a portable impervious device is acceptable.

Junkyard: an establishment or place 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.

Outdoor storage: storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.

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.

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.

Regulated substance: petroleum, petroleum products, substances containing a regulated contaminant for which an ambient groundwater quality standard has been established under RSA 485-C:6, and substances listed under 40 CFR 302, 7-1-05 edition, excluding substances used for the treatment of drinking water or waste water at department approved facilities

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-Dw 405.14 and Env-Dw 406.12 (for other public water systems).

Seasonal high-water table: The depth from the mineral soil surface to the uppermost soil horizon that contains 2 percent or more distinct or prominent redoximorphic features that increase in percentage with increasing depth as determined by a licensed Hydrogeologist, Soils Scientist, Wetlands Scientist, Engineer or other qualified professional approved by the Planning Board.

Secondary containment: a 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. Multiple containers that are connected shall be considered one container.

Snow dump: For the purposes of this ordinance, a location where snow, which is cleared from roadways and/or motor vehicle parking areas, is placed for disposal.

Stratified-drift aquifer: A geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.

Surface water: streams, lakes, ponds and tidal waters, including marshes, water-courses and other bodies of water, natural or artificial.

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.

IV. GROUNDWATER PROTECTION DISTRICT

The Groundwater Protection District is represented on the map entitled, “Town of Tamworth Groundwater Protection District,” dated 9-1-22, or the most recently revised version. The Groundwater Protection District is a district which includes within its boundaries:

A. All of the Wellhead Protection Areas for public water supply wells as defined under Article III of this ordinance.

Or

B. The Stratified Drift Aquifer(s).

Or a combination of the two.

If the areas referenced in A or B are updated, the Planning Board may revise the map of the Groundwater Protection District after a public hearing.

V. APPLICABILITY

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

VI. PERFORMANCE STANDARDS

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

- A. Animal manures, fertilizers, and compost must be stored in accordance with Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food (June 2011), and 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 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 containment structure must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s);
- F. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed 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.

VII. SPILL PREVENTION, CONTROL AND COUNTERMEASURE (SPCC) PLAN

Conditional uses, as described under Article X, part (A), using regulated substances shall submit a spill control and countermeasure (SPCC) plan to the Select Board's designated agent, who shall determine whether the plan 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. It shall include:

- A. A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas.
- B. Contact list and phone numbers for the facility response coordinator(s), cleanup contractors, and all appropriate federal, state, and local agencies who must be contacted in case of a release to the environment.
- C. A list of all regulated substances in use and locations of use and storage;
- D. 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.
- E. A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground.
- F. List of positions within the facility that require training to respond to spills of regulated substances.
- G. Prevention protocols that are to be followed after an event to limit future large releases of any regulated substance.

VIII. PERMITTED USES

All uses are permitted in the Groundwater Protection District unless they are Prohibited Uses or Conditional Uses. All uses must comply with the Performance Standards unless specifically exempt under Article XII.

IX. PROHIBITED USES

The following uses are prohibited in the Groundwater Protection District.

- A. The development or operation of a solid waste landfill;
- B. The outdoor storage of road salt or other deicing chemicals in bulk;
- C. The development or operation of a junkyard;
- D. The development or operation of a wastewater or septage lagoon;
- E. The development or operation of a petroleum bulk plant or terminal;
- F. The development or operation of gasoline stations.

X. CONDITIONAL USES

The Planning Board may grant a Conditional Use Permit for:

- A. Storage, handling, and use of regulated substances in quantities exceeding 55 gallons or 660 pounds dry weight at any one time, provided that an adequate spill prevention, control and countermeasure (SPCC) plan, in accordance with Article VII, is approved by the Select Board's designated agent;

In granting such approval the Planning Board must first determine that the proposed use is not a prohibited use (as listed in Article IX of this Ordinance) and will be in compliance with the Performance Standards in Article VI as well as all applicable local, state and federal requirements. The Planning Board may, at its discretion, require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board and in form and substance approved by the Board's legal counsel, to be posted to ensure completion of construction of any facilities required for compliance with the Performance Standards.

XI. EXISTING NON-CONFORMING USES

Any lawful use of the land or a building or a 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 that:

- A. A non-conforming use shall not be changed to another non-conforming use
- B. A non-conforming use shall not be enlarged or expanded to be made less conforming;
- C. A non-conforming use which has been discontinued for two years shall not be resumed;
- D. Any non-conforming use destroyed by fire or other natural disaster may be repaired, replaced, or resumed within two years, but only in accordance with Sections A and B of Article XI.
- E. 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.

XII. EXEMPTIONS

The following uses are exempt from the specified provisions of this ordinance as long as they are in compliance with all applicable local, state, and federal requirements:

- A. Any private residence is exempt from all Performance Standards;
- B. Any commercial entity or facility where regulated substances are stored in containers with a capacity of less than five gallons is exempt from Article VI, Performance Standards, sections 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 is 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) 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 XIV of this ordinance.
- J. Agricultural activities as regulated by the NH Department of Agriculture, Markets, and Food under RSA 425:2 are exempt from Article VI.
- K. Timber harvesting activities, as regulated under RSA 227-J, are exempt from all provisions of this ordinance.

XIII. RELATIONSHIP BETWEEN STATE AND LOCAL REQUIREMENTS

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

XIV. MAINTENANCE AND INSPECTION

- A. For uses requiring Planning Board approval, inspections may be required to verify compliance with Performance Standards. Such inspections shall be performed by the Select Board's designated agent at reasonable times with prior notice to the landowner. If consent for an inspection is not granted, the official performing inspections may obtain an administrative inspection warrant under RSA Chapter 595-B.
- B. All properties in the Groundwater Protection District known to the Select Board's designated agent 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 XII, shall be subject to inspections under this Article.
- C. For uses requiring Planning Board approval for any reason, a narrative description of maintenance requirements for structures required to comply with Performance Standards shall be recorded so as to run with the land on which such structures are located, at the Carroll County Registry of Deeds. The description so prepared shall comply with the requirements of RSA 478:4-a.
- D. The Select Board may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Select Board as provided for in RSA 41:9-a.

XV. 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 Select Board 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.

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 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, Select Board, 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 Select Board 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 Select Board 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.

XVI. 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 should such provisions be added to the terms of this chapter as provided for in RSA 674:33, IV.
3. Authorize, upon appeal in specific cases, a variance from the terms of this ordinance as provided for in RSA 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.

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 should future amendments to this Ordinance specify that any uses are permitted by special exception, as provided in RSA 674:33.

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 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.

XVII. SAVING CLAUSE

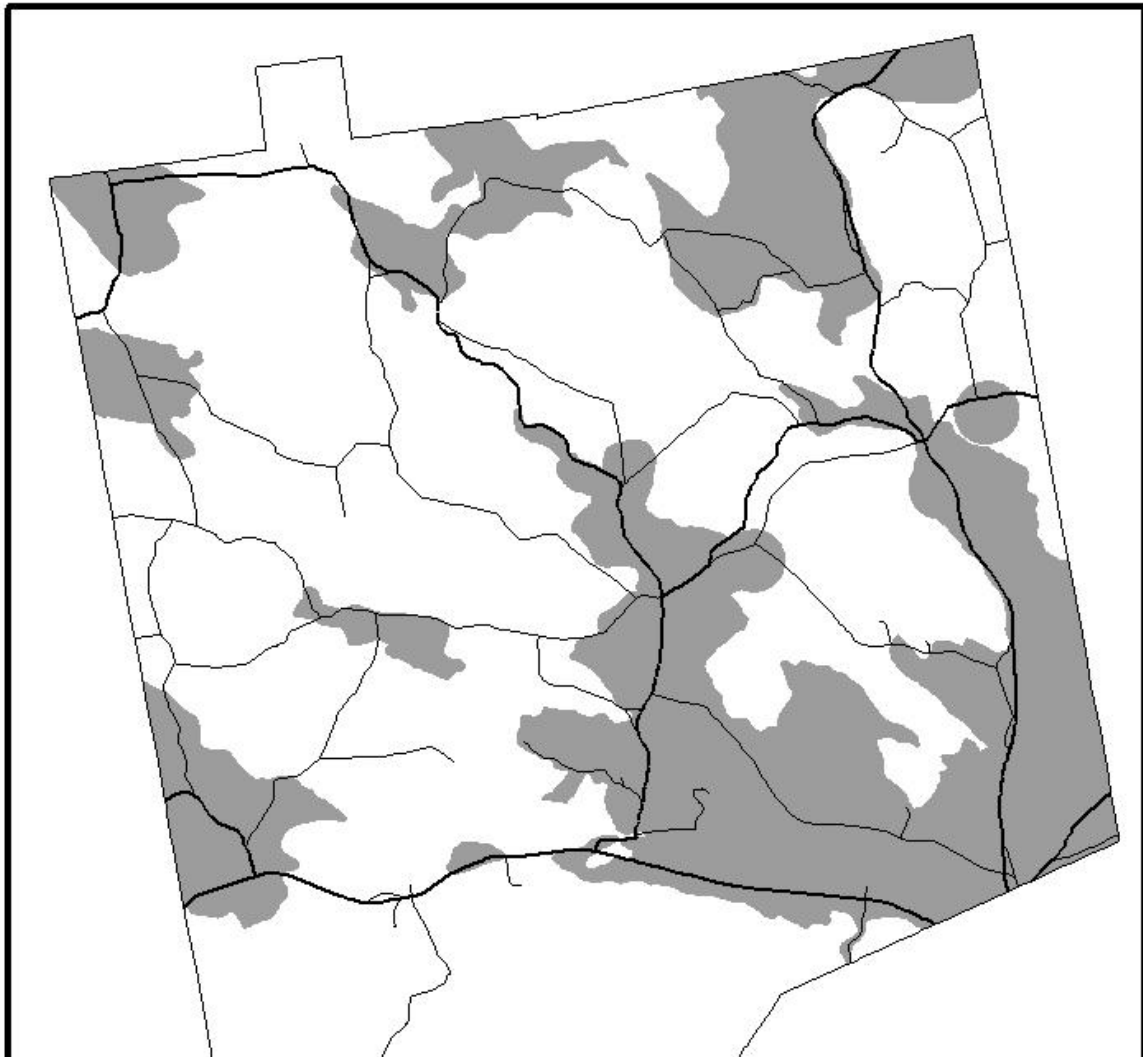
If any provision of this ordinance is found to be unenforceable, such provision shall be considered separable and shall not be construed to invalidate the remainder of the ordinance.

XVIII. EFFECTIVE DATE

This ordinance shall be effective January 1, 2024.

Tamworth Groundwater Protection District

09/01/22



Disclaimer: Data presented on this map represents stock data sets obtained from NH GRANIT, at Complex Systems Research Center (CSRC), UNH, and NH Department of Environmental Services.
Projection: NH State Plane Feet, North American Datum 1983
Scale: 1:80,000 with a standard accuracy of +/- 60 feet.

Aquifers: 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. Aquifer map data was generated as part of groundwater resources study under a cooperative agreement between the US Geological Survey and NH Department of Environmental Services, Water Resources Division. Latest revision: February 2000.

Wellhead Protection Areas: All of the NH Department of Environmental Services approved Wellhead Protection Areas (WHPAs) for community Public Water System. WHPAs maps for community and non-community, non-transient drinking water supplies, are delineated using hydrologic areas of concern as a basis for determining surface areas that flow to a surface water body. Latest revision: April 2022.

