

Proposed Amendment to the Town of Deerfield Zoning Ordinance (DZO)

Background: At present, the Town of Deerfield lacks a zoning provision to protect the groundwater of the community as residents and businesses rely entirely upon public and private wells for drinking water. A Source Water Protection Plan was prepared for the Town by the Southern New Hampshire Planning Commission as a result of a grant provided by the New Hampshire Department of Environmental Services (NH DES). This plan is intended to be a planning guide for local officials to use to protect drinking water sources within their community. One of the main goals of the plan is to establish a Groundwater Protection District for the Town of Deerfield which reflects the NH DES Model Groundwater Protection Ordinance.

The following Groundwater Protection Ordinance proposed for the Town of Deerfield complies with state laws and is consistent with current approaches to groundwater protection. Combined with the proposed amendments to the Town of Deerfield Site Plan and Subdivision Regulations, the Town of Deerfield will have effective and manageable land use laws in place to protect the community’s groundwater supplies for many years. In the future, the Town may decide to provide additional controls, including inspections and monitoring of certain sites which pose a threat to groundwater.

Zoning Amendment – Groundwater Protection

Insert the following new Groundwater Protection District into Article II as a new section 214 entitled Groundwater Protection Overlay District.

Section 201: Establishment of Districts

The Town of Deerfield is hereby divided into one townwide Zoning District along with several overlay zoning districts.

<u>Full Name</u>	<u>Short Name</u>
<i>Agricultural Residential</i>	<i>AR</i>

The DZO has the following overlay districts:

- Section 210 --- Wetlands Conservation District;
- Section 211 --- Floodplain Development;
- Section 212 --- Commercial / Industrial Overlay District; and
- Section 213 --- Senior Housing Overlay District; and
- Section 214 --- Groundwater Protection (proposed)

Establish a new Section 214 entitled “Groundwater Protection” to read as follows:

Section 214: GROUNDWATER PROTECTION

A. Authority

The Town hereby adopts the following Section 214 pursuant to the authority granted under RSA 674:16, in particular RSA 674:16, II and RSA 674:21,I, (j) relative to innovative land use controls.

B. Purpose

The Town of Deerfield views existing and potential groundwater supply areas and surface waters as being a finite resource within the Town. These resources are needed for both present and future public water supplies within the Town. The purpose of this section is accomplished by regulating those land uses that could contribute pollutants to the Town's present and/or future public water supply.

C. Definitions

1. **Ambient Groundwater Quality Standards:** Maximum concentration levels for regulated contaminants in groundwater which result from human operations or activities, as delineated in RSA 485-C:6.
2. **Aquifer:** A geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.
3. **Green Yard:** A junkyard which has been certified by the NH DES as a Green Yards under Phase II: Compliance Assurance and Certification component of the NH DES Green Yards Program.
4. **Groundwater:** Subsurface water that occurs beneath the water table in soils and geologic formations.
5. **Impervious:** Not readily permitting the infiltration of water.
6. **Impervious Surface:** A surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. The following surfaces are not considered impervious: earthen, wooden, or gravel surfaces; or other surfaces which could react with or dissolve when in contact with the substances stored on them.
7. **Junkyard:** An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk (ex. such as scrap metal, used appliances), or for the maintenance or operation of an automotive recycling yard, and includes garbage dumps and sanitary landfills. 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.
8. **Loam:** See NH Department of Transportation Section 641.
9. **Outdoor Storage:** Storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.
10. **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 [New Hampshire Administration Rule Env-Ws 302.02 (bg) and RSA 485:I-aXV].
11. **Regulated Substance:** Petroleum, petroleum products and substances Listed under 40 CFR 302.4, 7-1-90 Edition, or current edition [US Code of Federal Regulations], excluding the following substances: ammonia, sodium hypochlorite, sodium hydroxide, acetic acid, sulfuric acid, potassium hydroxide, potassium permanganate and propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure. Copies of 40 CFR 302.4, 7-1-90 Edition, or current edition, are available on line at the Environmental Protection Agency (EPA) website or in the Planning Board Office.
12. **Sanitary Protective Radius:** The area around a well that must be maintained in its natural state as required by Env-Ws 378 or 379 (for community water systems) and Env-Ws 372.13 (for other public water systems).
13. **Secondary Containment:** A structure such as a berm or dike with an impervious surface which is adequate to hold at least 110% of the volume of the largest regulated-substances container that will be stored there.
14. **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.

15. **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.
16. **Surface Water:** Streams, lakes, ponds and tidal waters, including marshes, water courses and other bodies of water, natural or artificial.
17. **Top Soil:** See Loam
18. **Wellhead Protection Area:** The surface and subsurface area surrounding water well or well field supplying a community public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field. [RSA 485-C:2 Definitions]

D. Groundwater Protection District

The Groundwater Protection District is an overlay district that is superimposed over the existing underlying zoning of the entire Town of Deerfield and corresponds to the map entitled “Town of Deerfield Public Water Supply and Wellhead Protection Areas” prepared by the SNHPC in 2007.

E. Applicability

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

F. Performance Standards

The following Performance Standards are in addition to the regulations set forth in the balance of this Article and apply to all uses in the Groundwater Protection District unless exempt under Section K:

1. For any use that will render impervious more than 15% or more than 10,000 square feet of any lot, whichever is greater, a stormwater management plan shall be prepared in a manner consistent with Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, Rockingham County Conservation District, August 1992 and Best Management Practices for Urban Stormwater Runoff, NH Department of Environmental Services, January 1996. The Planning Board shall determine whether or not the Stormwater Management Plan is consistent with the above referenced standards and may reject any Management Plan which fails to conform to the standards.
2. Stormwater management plans prepared pursuant to paragraph 1 above shall demonstrate that stormwater recharged to groundwater will not result in violation of Ambient Groundwater Quality Standards (Env-Ws 410.05) at the property boundary.
3. Animal manures, fertilizers, and compost must be stored in accordance with the Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets, and Food, August, 1998, and subsequent revisions.
4. All regulated substances stored in containers with a capacity of 5 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.
5. Facilities where regulated substances are stored must be secured against unauthorized entry by means of a door(s) and/or gate(s) which are locked when authorized personnel are not present and must be inspected weekly by the facility owner.
6. Outdoor storage areas for regulated substances must be protected from exposure to precipitation and must be located at least 75 feet from surface water or storm drains, wetlands, private wells and outside the sanitary protective radius of wells used by public water systems.

7. Secondary containment must be provided for outdoor storage of regulated substances if an aggregate of 275 gallons or more of regulated substances are stored outdoors on any particular property.
8. 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.
9. All land cleared and graded for the purpose of establishing lawns and subject to Subdivision or Site Plan Review Regulations must be finish graded with at least 4 inches of good quality loam or topsoil in order to reduce the demand for lawn irrigation.

G. Permitted Uses

All uses permitted by right, special exception or variance in the underlying district shall be permitted in the Groundwater Protection District unless identified in Section H. as a Prohibited Uses or Section I. as a Conditional Use. All Permitted Uses must comply with the Performance Standards set forth in Section F. unless specifically exempted under Section K. Exemptions.

H. Prohibited Uses

The following uses are prohibited in the Groundwater Protection District.

1. The siting or operation of a hazardous waste disposal facility as defined under RSA 147-A.
2. The siting or operation of a solid waste landfill.
3. The siting or operation of a wastewater or septage lagoon.
4. The siting or operation of a sludge monofill or sludge composting facility.
5. The storage of regulated substances, unless in a free-standing container within a building, or above ground with secondary containment adequate to contain 110% of the container's total storage capacity.
6. The storage of commercial fertilizers, unless such storage is within a structure designed to prevent the generation and escape of runoff or leachate.
7. The sitting or operation of junkyards, unless such facility is certified by the NH DES as a Green Yards under the Phase II: Compliance Assurance and Certification component of the NH DES Green Yards Program.

I. Conditional Uses

The issuance of a Conditional Use Permit is subject to Site Plan Approval by the Planning Board. The Planning Board may grant a Conditional Use Permit for a use that is otherwise permitted within the underlying district, if the permitted use is or is involved in one or more of the following:

1. Storage, handling, and use of regulated substances in quantities exceeding 100 gallons or 800 pounds dry weight at any one time, provided that an adequate plan is in place to prevent, contain, and minimize releases from catastrophic events such as spills or fires which may cause large releases of regulated substances.

- 2 Any use that will render impervious more than 15% or 10,000 square feet of any lot, whichever is greater. In granting such approval the Planning Board must first determine that the proposed use is not a prohibited use and will be in compliance with the Performance Standards 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, to be posted to ensure completion of construction of any facilities required for compliance with the Performance Standards. The amount of this bond shall be in addition to any other bond required by the Board under either the subdivision or site plan regulations.
- 3 The siting or operation of a commercial composting facility.
- 4 The siting or operation of a snow dump from offsite sources.
- 5 The siting or operation of a commercial car wash. The facility must be designed and operated as a closed-loop system.

J. Existing Nonconforming Uses

Existing nonconforming uses may continue without expanding or changing to another nonconforming use, but must be in compliance with all applicable state and federal requirements, including NHDES Rules Env-Ws 421, Best Management Practices for Preventing Groundwater Contamination. However, under no circumstances will a nonconforming use be permitted when a continuance of that use presents a risk to public health and/or safety.

K. Exemptions

The following uses are exempt from the provisions of this Article. This exemption shall not excuse compliance with all other applicable local, state, and federal requirements:

1. Any private residence is exempt from all Performance Standards except for Section F. 1, 2, and 3.
2. Any business or facility where regulated substances are stored in containers with a capacity of five (5) gallons or less is exempt from Performance Standard F. 5.
3. 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 detect F. 5.
4. 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 F. 5. through 8.
5. Storage and use of office supplies is exempt from Performance Standards F. 5 through 8.
6. Temporary storage of construction materials on a site where they are to be used is exempt from Performance Standards F. 5. through 8.
7. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from all provisions of this Article.
8. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Hw 401.03(b)(1) and 501.01(b) are exempt from Performance Standards F. 5 through 8.

9. Underground storage tank systems and above ground storage tank systems that are in compliance with applicable state rules are exempt from inspections under Section M. of this Article.

L. Relationship between State and Local Requirements

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

M. Maintenance and Inspection

1. Inspections may be required to verify compliance with Performance Standards. Such inspections shall be performed by the Code Enforcement Officer at reasonable times with prior notice to the landowner.
2. All properties within the Groundwater Protection District known to the Code Enforcement Officer as using or storing regulated substances in containers with a capacity of 10 gallons or more except for facilities where all regulated substances storage is exempt from this Article under Section K., shall be subject to inspections under this Section.
3. The Planning 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 Planning Board as provided for in RSA 41-9: a.

N. Enforcement Procedures and Penalties

Any violation of the requirements of this Article shall be subject to the enforcement procedures and penalties detailed in RSA 676.

O. Saving Clause

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

P. Effective Date

This Article shall be effective upon adoption by the municipal legislative body.

December 10, 2010