

## **ARTICLE 12 – WATER RESOURCE PROTECTION**

### **Section 1201 – Wetlands and Watershed Protection District**

#### **1201.1 Authorities and Purpose**

- A. Establishment of this ordinance with the authority vested in the Fremont Planning Board by the voters of the Town of Fremont, N.H. on March 11, 1947 and the authority vested in the Conservation Commission by the voters of the Town of Fremont, N.H. on RSA 36-A:1-6.
- B. Purpose: In the interest of public health, convenience, safety, and welfare, the regulation of the District are intended to guide the use of areas of lands draining into wetlands, rivers, brooks, ponds or water supply areas; to control building and land uses which would contribute to pollution of surface and ground water by sewage; to prevent the destruction of watershed areas and wetlands which provide flood protection, recharge of ground water supply, and augmentation of stream flow during dry periods; to prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities which arise because of inharmonious use of watershed areas and wetlands; to encourage those uses that can be appropriately and safely located in this district.

#### **1201.2 Administration**

- A. Administration of the provisions of this ordinance shall be coordinated with the Fremont Conservation Commission through the designated commission member represented on the Fremont Planning Board. Responsibilities of said member shall be consistent with RSA 36:0 and RSA 36-A: 2-3.
- B. To the extent possible the Watershed Protection District shall, through the Planning Board, maintain close coordination with surrounding watershed districts and regional watershed authorities.

#### **1201.3 Definitions**

- A. Wetlands: Wetlands means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adopted for life in saturated soil conditions.
- B. Watershed Protection Area: Watershed Protection Area shall mean an area of land surrounding designated wetlands for the purpose of controlling building and land uses which would contribute to the pollution of surface and ground water, and preventing the destruction of watershed areas and wetlands which

would provide flood protection. Land areas designated as Watershed Protection Areas shall comply with the provisions of Section 1201.5.

1. Watershed Protection Area: - Permanent flowage; (rivers, brooks, streams and ponds) shall include all lands within one hundred fifty (150) feet of the mean annual high of the Exeter River, Piscassic River, Loon Pond, Red Brook, and Brown Brook and other streams to be named.
2. Watershed Protection Area: - intermittent flowage; Any brook, stream, or pond having flowing or standing water for six (6) months of the year shall include all lands within one hundred (100) feet of the center line of said brook or stream and one hundred (100) feet from the mean annual high of said pond.
3. Watershed Protection Area: Wetlands: shall include that land area within one hundred (100) feet of any designated wetland. In addition, the protection area shall include "poorly drained" and "very poorly drained" soils and a one hundred (100) foot buffer around these soils.
4. Sections 1 – 3 above shall be considered minimum buffer areas for watershed protection. In certain cases the Board may require increased watershed boundaries when considering, but not limited to, the following: when areas abutting watershed protection areas have excessive inclines of twelve (12) percent or greater, importance of watershed to water supply, importance of watershed to wildlife habitat. If the Board makes a determination that increased watershed protection is necessary, the Board may require the watershed protection area to be increased by up to and not to exceed one hundred (100) feet.

C. Prime Wetlands: Shall mean any areas falling within the jurisdictional definitions of RSA 482-A:3 and RSA 482-A:4 that possess one or more of the values set forth in RSA 482-A:1 and that, because of their size, unspoiled character, fragile condition or other relevant factors, make them of substantial significance. Such maps or designations, or both, shall be in such form and to such scale, and shall be based upon such criteria, as are established by the commissioner through rules adopted pursuant to RSA 541-A.

**1201.4** Test Procedures (Subdivisions Regulation): Soil testing procedures shall be subject to the prior review, approval and on site inspection by the Planning Board or its designate. Such procedures shall be conducted by, and at the expense of, the landowner/subdivider. A complete record of the tests shall be submitted to the Selectmen and placed on file with the Planning Board.

**1201.5** Uses Permitted: Any of the following uses that do not result in the erection of any dwelling or building in public or private use or alter the surface configuration of the land may be permitted in this district consistent with State and Federal wetland regulations:

- A. Forestry, tree farming, within the limits of RSA 224:44a.
- B. Agriculture, including grazing, farming, truck gardening, and harvesting of crops, except that mink farms and piggeries shall not be included in this district.
- C. Drainage ways, streams, creeks, or other paths of normal run-off water.
- D. Water impoundments and well supplies.
- E. Wildlife refuge.
- F. Open space as may be permitted by subdivision regulations and other sections of this ordinance.

#### **1201.6 Special Provisions**

- A. No waste disposal system may be located closer than one hundred (100) feet to any wetland.
- B. No waste disposal system may be located within a watershed protection area.
- C. Wetlands shall not be used to satisfy the minimum lot area and setback requirements but may be included in the total lot area.
- D. Watershed protection areas may be included in the minimum lot size requirements. All dwellings, structures, or parking areas shall have no portion within the Watershed Protection Area and/or no portion closer to Wetlands than those limits defined under Article IV as setback requirements.

**1201.7 Prime Wetlands:** In accordance with RSA 482-A: 15 the wetland system commonly known as "Spruce Swamp" and other designated wetland systems described in documents and maps filed by the Planning Board and Conservation Commission with the Town Clerk and the State of New Hampshire Department of Environmental Services, are hereby designated as a prime wetlands.

**1201.8 Special Exceptions:** The Board of Adjustment, after proper public notice and public hearing, may grant special exceptions for the following uses within the district, the application for such uses having been referred by the Planning Board for site plan review, the Conservation Commission, the Health Officer and Building Inspector and reported upon by all four (4) prior to the public hearing or thirty (30) days have elapsed following such referral without receipt of such reports.

Recreation, including golf courses, parks (but not an amusement park) boating, fishing, landings, picnic areas and any non-commercial open-air recreation use, provided there are adequate provision for disposal of waste products and for parking.

Dredging, filling, drainage (in compliance with the RSA 485-A:17) or otherwise altering the surface configuration of the land; streets, roads and other access ways and utility rights if essential to the productive use of land if so located and constructed as to minimize any detrimental impact of such uses upon the wetland and watershed protection areas.

Exception: No Special Exception is required for temporary disturbance such as installation of a well with associated water lines.

Proper evidence to this effect shall be submitted in writing to the Board of Adjustment and shall be accompanied by the findings of a review by the Rockingham County Soil Conservation Service District of the environment effects of such proposed use upon the wetland and watershed protection area in question.

## **Section 1202 – Floodplain Development Ordinance**

### **Purpose**

Certain areas of the Town of Fremont, New Hampshire are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of Fremont, New Hampshire has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as detailed in this Floodplain Management Ordinance.

This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Fremont Floodplain Development Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Fremont Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for Rockingham County" together with the associated Flood Insurance Rate map of the town dated May 17, 2005 which are declared to be a part of this ordinance and are hereby incorporated by reference.

### **1202.1 Definition of Terms**

The following definitions shall apply only to this Floodplain Development Ordinance, and shall not be affected by, the provisions of any other ordinance of the Town of Fremont.

**"Base Flood"** means the flood having a one percent (1%) possibility of being equaled or exceeded in any given year.

**"Base Flood Elevation"** means the water surface elevation having a one-percent chance of being equaled or exceeded in any given year.

**"Basement"** means any area of a building having its floor subgrade on all sides.

**"Building"** - see "structure".

**"Development"** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operation or storage of equipment or materials.

**"FEMA"** means the Federal Emergency Management Agency.

**"Flood" or "Flooding"** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

**"Flood Insurance Rate Map" (FIRM)** means an official map incorporated with this ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Fremont.

**"Flood Insurance Study"** means an examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

**"Floodplain" or "Flood-prone area"** means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

**"Flood proofing"** means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

**"Floodway"** - see "Regulatory Floodway".

**"Functionally dependent use"** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/ unloading of cargo or passengers, and ship building/repair facilities but does not include long-term storage or related manufacturing facilities.

**"Highest adjacent grade"** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**"Historic Structure"** means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register,

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district,
3. Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior, or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (a) By an approved state program as determined by the Secretary of the Interior, or
  - (b) Directly by the Secretary of the Interior in states without approved programs.

**"Lowest Floor"** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

**"Manufactured Home"** means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than one hundred and eighty (180) consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.

**"Manufactured Home Park or Subdivision"** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**"Mean sea level"** means the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a communities Flood Insurance Rate Map are referenced.

**"New construction"** means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**"Recreational Vehicle"** means a vehicle which is (i) built on a single chassis, (ii) four hundred (400) square feet or less when measured at the largest horizontal projection, (iii) designed to be self propelled or permanently towable by a light duty truck, and (iv)

designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel or seasonal use.

**"Regulatory floodway"** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**"Special flood hazard area"** means the land in the floodplain within the Town of Fremont subject to a one percent (1%) or greater possibility of flooding in any given year. The area is designated on the FIRM as Zones A and AE.

**"Start of Construction"** includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred and eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

**"Structure"** means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**"Substantial damage"** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

**"Substantial Improvement"** means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure. The market value of the structure should equal:

1. The appraised value prior to the start of the initial repair or improvement, or
2. In the case of damage, the value of the structure prior to the damage occurring.

For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary,

or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

**“Violation”** means the failure of a structure or other development to be fully compliant with the community’s flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

## **1202.2 General Requirements**

- A. All proposed development in any special flood hazard area shall require a permit. The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:
  - 1. Be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,
  - 2. Be constructed with materials resistant to flood damage,
  - 3. Be constructed by methods and practices that minimize flood damages,
  - 4. Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- B. Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.
- C. For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the Building Inspector:
  - 1. The as-built elevation (in relation to mean sea level) of the lowest floor (including basement) and include whether or not such structures contain a basement.
  - 2. If the structure has been floodproofed, the as-built elevation (in relation to mean sea level) to which the structure was floodproofed.



3. Any certification of floodproofing.

The Building Inspector shall maintain for public inspection, and shall furnish such information upon request.

- D. The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U. S. C. 1334.
- E. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall:
1. Notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Conservation Commission, in addition to the copies required by the RSA 482-A:3.
  2. The applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Conservation Commission, including notice of all scheduled hearings before the Wetlands Bureau (and notice of local wetlands hearings)
  3. The applicant shall submit to the Building Inspector, certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
- F. Along watercourses with a designated Regulatory Floodway no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.
- G. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:
- “No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge.”

- H. In special flood hazard areas the Building Inspector shall determine the 100-year base flood elevation in the following order of precedence according to the data available:
1. In Zone AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.
  2. In Zone A, the Building Inspector shall obtain, review, and reasonably utilize any base flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals). In Zone A where a base flood elevation is not available or not known, the base flood elevation shall be at least 2 feet above the highest adjacent grade.
- I. The Building Inspector's base flood elevation determination will be used as criteria for requiring in special flood hazard areas that:
- a. All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation.
  - b. That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the base flood elevation; or together with attendant utility and sanitary facilities, shall:
    - i. Be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water,
    - ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy, and
    - iii. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
  - c. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
  - d. All recreational vehicles placed on sites within Zones A and AE shall either:

- i. Be on the site for fewer than one hundred and eighty (180) consecutive days
  - ii. Be fully licensed and ready for highway use (on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
  - iii. Meet all standards of Section 1202.2 (l)(c) for manufactured homes.
- e. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:
  - i. The enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage,
  - ii. The area is not a basement, and
  - iii. Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

### **1202.3 Variances and Appeals**

- A. Any order, requirement, decision or determination of the Building Inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
- B. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I (b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:
  - 1. That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
  - 2. That if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
  - 3. That the variance is the minimum necessary, considering the flood hazard, to afford relief.

- C. The Zoning Board of Adjustment shall notify the applicant in writing that: (i) the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five (25) dollars for one hundred (100) dollars of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.
- D. The community shall (i) maintain a record of all variance actions, including their justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

### **Section 1203 – Aquifer Protection District**

**1203.1** Pursuant to RSA 674:16-21, the Town of Fremont adopts an Aquifer Protection District and accompanying regulations in order to protect, preserve and maintain potential groundwater supplies and related groundwater recharge areas within a known aquifer identified by the Town. The objectives of the aquifer protection district are:

- To protect the public health and general welfare of the citizens of the Town of Fremont.
- To prevent development and land use practices that would contaminate or reduce the recharge of the identified aquifer.
- To promote future growth and development of the Town, in accordance with the Master Plan, by insuring the future availability of public and private water supplies.
- To encourage uses that can appropriately and safely be located in the aquifer recharge areas.

**1203.2** General: The provision of the Aquifer Protection District shall be administered by the Planning Board. All development proposals, other than single or two-family residential construction not involving the subdivision of land, shall be subject to subdivision and/or site plan review and approval in accordance with Planning Board rules and regulations. Such review and approval shall precede the issuance of any building permit by the Town.

**1203.3** Enforcement: The Board of Selectmen shall be responsible for the enforcement of the provisions and conditions of the Aquifer Protection District.

**1203.4 Definitions:** The following definitions shall apply only to this Aquifer Protection District and shall not be affected by, the provisions of any other ordinance of the Town of Fremont.

**Animal Feedlot:** A commercial agricultural establishment consisting of confined feeding areas and related structures used for the raising of livestock. An animal feedlot shall be considered one on which more than five (5) animals are raised simultaneously.

**Aquifer:** For the purpose of this Ordinance, aquifer means a geologic formation, group of formations, or part of a formation of rock, sand, or gravel that is capable of yielding quantities of groundwater usable for municipal or private water supplies.

**Dwelling Unit:** A building or that portion of a building consisting of one (1) or more rooms designed for living and sleeping purposes, including kitchen and sanitary facilities and intended for occupancy by not more than one family or household.

**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.

**Groundwater:** All the water below the land surface in the zone of saturation or in rock fractures capable of yielding water to a well.

**Groundwater Recharge:** The infiltration of precipitation through surface soil materials into groundwater. Recharge may also occur from surface waters, including lakes, streams and wetlands.

**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.

**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.

**Leachable Wastes:** Waste materials, including solid wastes, sludge and agricultural wastes that are capable of releasing contaminants to the surrounding environment.

**Mining of Land:** The removal of geologic materials such as topsoil, sand and gravel, metallic ores, or bedrock to be crushed or used as building stone.

**Non-Conforming Use:** Any lawful use of buildings, structures, premises, land or parts thereof existing as of the effective date of this Ordinance, or amendment thereto, and not in conformance with the provisions of this Ordinance, shall be considered to be a non-conforming use.

**Non-Municipal Well:** Any well not owned and operated by the Town of Fremont or its agent.

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

**Public water system:** a system for the provision to the public of piped water for human consumption as defined by RSA 485:1-a.

**Recharge Area:** The land surface area from which groundwater recharge occurs.

**Regulated substance:** petroleum, petroleum products, regulated contaminants for which an ambient groundwater quality standard has been established under RSA 485-C:6, and substances listed under 40 CFR 302, excluding substances used in 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 406.12 (for other public water systems).

**Seasonal high water table:** The depth from the mineral soil surface to the upper most 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, Civil or Environmental Engineer or other qualified professional approved by the Planning Board). Alternately, the shallowest depth measured from ground surface to free water that stands in an unlined or screened borehole for at least a period of seven consecutive days.

**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.

**Septage:** Liquid or solid waste generated by septic disposal systems. Septic waste containing wash water, gray waters, human feces, excrement, dregs, sediment, grease, oils and any other waste generated in a domestic septic disposal system.

**Sludge:** Residual materials produced by the sewage treatment process.

**Solid Waste:** Any discarded or abandoned material including refuse, putrescible material, septage, or sludge, as defined by New Hampshire Solid Waste Rules He-P 1901.03. Solid waste includes solid, liquid, semi-solid, or contained gaseous waste material resulting from residential, industrial, commercial, mining, and agricultural operations and from community activities.

**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.

**Structure:** Anything constructed or erected, except a boundary wall or fence, the use of which requires location on the ground or attachment to something on the ground. For the purposes of this Ordinance, buildings are structures.

**Toxic or Hazardous Materials:** Any substance or mixture of such physical, chemical, or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this Town. Toxic or hazardous materials include, without limitation, volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalies, and include products such as pesticides, herbicides, solvents and thinners, and such other substances as defined in New Hampshire Water Supply and Pollution Control Rules, Section Env-Dw 902 in New Hampshire Solid Waste Rules Env-Sw 103.12), and in the Code of Federal Regulations 40 CFR 261.

**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.

## **1203.5 District Boundaries**

A. Location: The Aquifer Protection District is defined as the area shown on the map entitled Fremont New Hampshire – Surface Water Resources, Aquifer

Protection, Flood Zone and Zoning District Map: March 2013 and any updates located in the Planning Office.

The Aquifer Protection District is a zoning overlay district which imposes additional requirements and restrictions to those of the current ordinances. In all cases, the more restrictive requirement(s) shall apply.

- B. Recharge Areas: For the purpose of this Ordinance, the primary recharge area for the identified aquifer is considered to be co-terminus with the Aquifer and the High Potential to Yield Groundwater areas. No secondary recharge area has been identified at the time of enactment.
- C. Appeals: Where the bounds of the identified aquifer or recharge area, as delineated, are in doubt or in dispute, any landowner aggrieved by such delineation may appeal the boundary location to the Planning Board. Upon receipt of such appeal, the Planning Board shall suspend further action on development plans related to the area under appeal and shall engage, at the landowner's expense, a qualified hydrogeologist to prepare a report determining the proper location and extent of the aquifer and recharge area relative to the property in question. The aquifer delineation shall be modified by such determination subject to review and approval by the Planning Board.

#### **1203.6 Performance Standards**

The following Performance Standards apply to all uses in the Aquifer Protection District unless exempt under Section 1203.8.I:

- A. For any new or expanded uses that will render impervious more than 15 percent or more than 2,500 square feet of any lot, whichever is greater, a stormwater management plan shall be prepared which the Planning Board determines is consistent with New Hampshire Stormwater Manual Volumes 1-3, December 2008, NH Department of Environmental Services.
- B. Conditional uses as defined under Section 1203.8.F shall develop stormwater management and pollution prevention plans and include information consistent with Developing Your Stormwater Pollution Prevention Plan: A Guide for Industrial Operators (US EPA, Feb 2009) The plan shall demonstrate that the use will:
  - 1. Meet minimum stormwater discharge setbacks between water supply wells and constructed stormwater practices as found within the Innovative Land Use Planning Techniques: A Handbook for Sustainable Development, Section 2.1 Permanent (Post Construction) Stormwater Management,( NHDES, 2008 or later edition)



2. Minimize, through a source control plan that identifies pollution prevention measures, the release of regulated substances into stormwater;
  3. Stipulate that expansion or redevelopment activities shall require an amended stormwater plan and may not infiltrate stormwater through areas containing contaminated soils without completing a Phase I Assessment in conformance with ASTM E 1527-05, also referred to as All Appropriate Inquiry (AAI);
  4. Maintain a minimum of four feet vertical separation between the bottom of a stormwater practice that infiltrates or filters stormwater and the average seasonal high water table as determined by a licensed hydrogeologist, soil scientist, engineer or other qualified professional as determined by the Planning Board.
- C. 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; NH Department of Agriculture, Markets and Food (DAMF) may be consulted to help determine whether a particular facility is in compliance with the agriculture BMPs. NH DAMF may order property owners to develop a nutrient management plan when state BMPs related to manure or fertilizers are not followed and RSA 431:35 authorizes local health authorities and NHDES to enforce the plan.
- D. 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;
- E. 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;
- F. Outdoor storage areas for regulated substances, associated material or waste must be protected from exposure to precipitation and must be located at least 100 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;
- G. 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);

- H. 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;
- I. 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.
- J. 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
- K. All transfers of petroleum from delivery trucks and storage containers over five gallons in capacity shall be conducted over an impervious surface having a positive limiting barrier at its perimeter.

#### **1203.7 Spill Prevention, Control and Countermeasure (SPCC) Plan**

Conditional uses, as described under Section 1203.8.F, using regulated substances shall submit a spill control and countermeasure (SPCC) plan to the Health Office 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 current 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. A list of positions within the facility that require training to respond to spills of regulated substances.
- F. Prevention protocols that are to be followed after an event to limit future large releases of any regulated substance.

#### **1203.8 Use Regulations**

- A. Minimum Lot Size: Minimum lot size within the Aquifer Protection District shall be three (3) acres. Lots containing up to four (4) units shall contain an

additional eighteen thousand (18,000) square feet per unit. Lots containing five (5) or more units shall contain an additional thirty thousand (30,000) square feet per unit. No lot shall have more than one (1) residential structure regardless of the number of dwelling units.

- B. Hydrogeologic Study: For development proposals within the Aquifer Protection District, a hydrogeologic study shall be performed, by an engineer registered in the State of New Hampshire or a registered hydrologist. This study shall evaluate the development's impacts to groundwater within both the parcel to be developed and the surrounding land. The groundwater quality beyond the property lines of said site shall not be degraded by polluting substances such as nitrates, phosphates, bacteria, etc. Larger lots may be required based on the findings of said study.

This information will be required for proposed subdivisions of four (4) lots or greater. For subdivisions of three (3) lots or less the Planning Board will determine, on a case-by-case basis, the need for a hydrogeologic study. Particularly sensitive sites may include areas that have septic systems in close proximity to wells, or may contain excessively drained soils or steep slopes.

- C. Maximum Lot Coverage: Within the Aquifer Protection District, no more than fifteen percent (15%) of a single lot, or more than 2,500 square feet of impervious surface may be rendered impervious to groundwater infiltration.
- D. Prohibited Uses: The following uses are prohibited in the Aquifer Protection District except where permitted to continue as a non-conforming use:
1. Disposal of solid waste including brush or stumps.
  2. Storage and disposal of hazardous waste.
  3. Disposal of liquid, septage or leachable wastes except that from one or two-family residential subsurface disposal systems, or as otherwise permitted as a conditional use.
  4. Subsurface storage of petroleum and other refined petroleum products except for propane and natural gas.
  5. The development or operation of gasoline stations.
  6. Industrial uses which discharge contact type process waters on-site. Non-contact cooling water is permitted.
  7. Outdoor unenclosed storage or use of road salt or other de-icing chemicals.
  8. Dumping of snow containing de-icing chemicals brought from outside the district.
  9. Animal feedlots. (*see definitions = five (5) or more animals*)
  10. The development or operation of a junkyard
  11. All on site handling, disposal, storage, processing or recycling of hazardous or toxic materials.

E. Permitted Uses: The following activities may be permitted provided they are conducted in accordance with the purposes and intent of this Ordinance:

1. Land development, per the Fremont Zoning Ordinance, except as prohibited in Article 12, Section 1203.8.D.
2. Activities designed for conservation of soil, water, plants and wildlife.
3. Outdoor recreation, nature study, boating, fishing and hunting where otherwise legally permitted.
4. Normal operation and maintenance of existing water bodies and dams, splash boards and other water control, supply and conservation devices.
5. Foot, bicycle, and/or horse paths and bridges.
6. Maintenance, repair of any existing structure, provided there is no increase in impermeable surface above the limit established in Article 12, Section 1203.6.C.
7. Farming, gardening, nursery, forestry, harvesting and grazing, provided that fertilizers, herbicides, pesticides, manure and other leachables are used in accordance with the NH Department Agriculture, Markets, and Food best management practices and will not cause groundwater contamination and are stored under shelter.

F. Conditional Use Permit

1. The following uses are permitted with a Conditional Use Permit (in compliance with Town Zoning Ordinance):
  - a. Industrial and commercial uses not otherwise prohibited in Article 12, Section 1203.8.D
  - b. Multi-family residential development. (Minimum lot size to be determined by using Article 9 and substituting three (3) acres instead of two (2) acres).
  - c. Sand and gravel excavation and other mining provided that such excavation or mining is not carried out within eight (8) vertical feet of the seasonal high water table and that periodic inspections are made by the Planning Board or its agent to determine compliance.
  - d. 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 Section 1203.7, is approved by the Health Officer, Fire Chief, Code Enforcement Officer or other Town designated agent.
  - e. Any use that will render impervious more than 15 percent or 2,500 square feet of any lot, whichever is greater.

2. The Planning Board may grant a Conditional Use Permit for those uses listed above only after written findings of fact are made that all of the following are true:
  - a. The proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants;
  - b. The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer;
  - c. The proposed use will discharge no waste water on site other than that typically discharged by domestic waste water disposal systems and will not involve on-site storage or disposal of toxic or hazardous wastes as herein defined;
  - d. The proposed use complies with all other applicable sections of this Section 1203
3. The Planning Board may require that the applicant provide data or reports prepared by a professional engineer or hydrologist to assess any potential damage to the aquifer that may result from the proposed use. The Planning Board shall engage such professional assistance as it requires to adequately evaluate such reports and to evaluate, in general, the proposed use in light of the above criteria. Costs incurred shall be the responsibility of the applicant.
4. In granting such approval the Planning Board must first determine that the proposed use is not a prohibited use (as listed in Section 1203.8.D of this Ordinance) and will be in compliance with the Performance Standards in Section 1203.6 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.

G. Design and Operations Guidelines. Where applicable the following design and operation guidelines shall be observed within the Aquifer Protection District:

1. Safeguards. Provision shall be made to protect against toxic or hazardous materials discharge or loss resulting from corrosion, accidental damage, spillage, or vandalism through measures such as: spill control provisions in the vicinity of chemical or fuel delivery points; secured storage areas for toxic or hazardous materials; and indoor

storage provisions for corrodible or dissolvable materials. For operations which allow the evaporation of toxic or hazardous materials into the interiors of any structures, a closed vapor recovery system shall be provided for each such structure to prevent discharge of contaminated condensate into the groundwater.

2. Location. Where the premises are partially outside of the Aquifer Protection Overlay Zone, potential pollution sources such as on-site waste disposal systems shall be located outside the Zone to the extent feasible.
3. Drainage. All runoff from impervious surfaces shall be recharged on the site, and diverted toward areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are not feasible, and shall be preceded by oil, grease, and sediment traps to facilitate removal of contaminants.

#### H. Non-Conforming Uses

- i. Existing non-conforming uses may continue without expanding or changing to another non-conforming use, but must be in compliance with all applicable state and federal requirements, including Env-Wq 401, Best Management Practices Rules.
- I. 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:
- i. Any private residence is exempt from all Performance Standards provided it does not have a home occupation using regulated substance in greater than or equal to five (5) gallon storage containers.
  - ii. Any business or facility where regulated substances are stored in containers with a capacity of less than five gallons is exempt from Section 1203.6, Performance Standards, sections E through H;
  - iii. 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 E;
  - iv. 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 E through H;
  - v. Storage and use of office supplies is exempt from Performance Standards E through H;
  - vi. Temporary storage of construction materials on a site where they are to be used is exempt from Performance Standards E through H if incorporated within the site development project within six months of their deposit on the site;

- vii. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from all provisions of this ordinance;
- viii. 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 E through H;
- ix. Underground storage tank systems and aboveground storage tank systems that are in compliance with applicable state rules are exempt from inspections under Section 1203.8.J of this ordinance.

J. Maintenance and Inspections

- A. 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 Registry of Deeds for Rockingham County. The description so prepared shall comply with the requirements of RSA 478:4-a.
- B. 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.
- C. All properties in the Aquifer Protection District known to the Code Enforcement 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 Section 1203.8. I, shall be subject to inspections under this Article.
- D. The Board of Selectmen may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Board of Selectmen as provided for in RSA 41-9:a.

## **Section 1204 Septic System Design and Installation**

*In addition to meeting all local and state septic system siting requirements, all new on-lot waste water disposal systems installed in the District shall be designed by a Sanitary Engineer licensed in New Hampshire. These systems shall be installed under the supervision of said engineer. The Planning Board or its agent shall inspect the installation of each new system prior to covering, and shall certify that the system has been installed as designed.*

*Septic systems are to be constructed in accordance with the most recent edition of the "The State of New Hampshire Subdivision and Individual Sewage Disposal System Design Rules" as published by the New Hampshire Water Supply and Pollution Control Division.*

*However, the following more stringent requirements shall apply to all septic system construction:*

1. *There will be no filling of wetlands allowed to provide the minimum distance of septic to wetlands. (Ws 1007.04)*
2. *The seasonal high water table will be at least two (2) feet below the original ground surface during all seasons of the year (instead of six (6) inches). (Ws 1015.01(a)).*
3. *There will be at least three (3) feet of natural permeable soil (instead of two (2) feet) above any impermeable subsoil. (Ws 1015.01(b)).*
4. *There will be at least four (4) feet of natural soil (instead of three (3) feet) above bedrock. (Ws 1015.01(b)).*
5. *Standards for fill material: Fill material consisting of organic soils or other organic materials such as tree stumps, sawdust, wood chips and bark, even with a soil matrix shall not be used. The in place fill should have less than fifteen (15%) percent organic soil by volume. The in place fill should not contain more than twenty five (25%) percent by volume of cobbles six (6) inch in diameter). The in place fill should not have more than fifteen percent (15%) by weight of clay size (.002 mm and smaller) particles. The fill should be essentially homogeneous. If bedding planes and other discontinuities are present, detailed analysis is necessary.*