WETLAND AND AQUIFER PROTECTION ORDINANCE
FOR THE TOWN OF HAVERHILL, NH

ARTICLE I
PREAMBLE AND TITLE

Pursuant to the Authority conferred by the New Hampshire Revised Statutes Annotated [RSA] 674:16-17 and 674:21, and for the purpose of promoting the health, safety, morals, and general welfare of the Town of Haverhill, New Hampshire, the following Ordinance is hereby enacted by the voters of the Town of Haverhill, New Hampshire. This Ordinance shall be known and cited as the Town of Haverhill Wetland and Aquifer Protection Ordinance-hereinafter referred to as "this ordinance".

ARTICLE II
PURPOSE AND OBJECTIVE

The purpose of this ordinance is to protect, preserve, and maintain existing and potential groundwater sources of drinking water and groundwater recharge areas within known aquifers from the potential adverse impacts associated with inappropriate land uses and to limit the nature and intensity of development in wetland areas to those uses which can be reasonably and safely located in those areas. Objectives of this ordinance are to:

[a] protect natural areas,

[b] maintain ecological balance,

[c] protect potential water supplies and existing aquifers and aquifer recharge areas,

[d] prevent unnecessary or excessive expenditure of municipal and public funds which arise from the inharmonious use of wetlands,

[e] secure safety from floods,

[f] preserve the location, character, and extent of natural drainage courses,

[g] protect wildlike habitat,

[h] preserve scenic views, and

[i] encourage those uses that can be appropriately and safety located in wetland and aquifer areas.

ARTICLE III
DISTRICTS DEFINED

The Wetlands Conservation District shall encompass all land within a 75-foot horizontal buffer of all wetlands areas. Wetland areas for the Town of Haverhill are defined on the Soil Survey Map of Grafton County, dated April 1979, which is on file at the Haverhill Municipal Office.

The Aquifer Protection District shall encompass those areas which have been designated as having potential for use as a groundwater supply of drinking water as shown on the Water Resources Investigations Report 94-4181, Dated 1995, prepared by the U. S. Geological Survey and the State of New Hampshire Division of Environmental Services which is on file at the Haverhill Municipal Office.

The Wetlands Conservation District map and Aquifer Protection District map are hereby adopted by reference as part of this ordinance.

ARTICLE IV
DEFINITIONS

Unless otherwise stated, words shall, for the purpose of this ordinance, have the meaning indicated in this Article. Words used in the present tense include the future. The singular includes a corporation, partnership of incorporated association of persons. The word "shall" is mandatory, not directory.

Aquifer: Geologic formation composed of sand and gravel that contains significant amounts of potentially recoverable water.

Building: Any structure having a roof supported by columns or walls designed or built for the support, enclosure, shelter or protection of persons, animals or property of any kind.

Cleaning Services: Shall include but not be limited to dry cleaners, laundromats, and beauty salons.

Commercial Agricultural or Related Activities: Shall include those agricultural activities that generally involve the use of agricultural chemicals or stockpiling of manure, and where the product is for consumption by persons other than those living on the premises. Examples include but are not limited to golf courses, feed lots, kennels, livestock farms, nurseries, and sod farms.

Development: 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 operations.

Excavations: A land area used for the commercial taking of earth.

Food Processing: Shall include but not be limited to meat packing and slaughterhouses, dairies, and processed food manufacture.

General Service and Repair Shops: Shall include but not be limited to furniture stripping, painting and refinishing, photographic processing, printing, appliance and small engine repair, refrigeration, heating, ventilating and air conditioning shops.

Hydrogeologist: A person who by education and experience is able to capably quantitatively analyze and interpret hydrogeology.

Impervious: Quality of any material or structure which substantially restricts the penetration of surface water or rainfall into the soil.

Laboratory and Professional Offices: Shall include but not be limited to medical, dental, and veterinary offices, research and analytical laboratories.

Permitted Use: A use of property which is allowed by right in Haverhill.

Regulated Substance: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substances or mixture were discharged to land or water of the Town of Haverhill. Regulated substances include, without limitation, synthetic organic compounds, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalies and all other substances defined as toxic or hazardous under NH Code of Administrative Rules ENV-WM 100-1000.

Solid Waste: Any discharge 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 certain gaseous waste material resulting from residential, industrial, commercial, mining, and agricultural operations and from community activities.

Solid Waste Facilities: Any principal use involving the processing, storage or disposal of solid waste. Solid waste facilities shall include but not be limited to junkyards, salvage yards, landfills, and transfer stations.

Special Exceptions: The specific use of a building or lot which may be permitted under this Ordinance only upon formal application to the Board of Adjustment. Special exceptions are designed to permit certain types of uses when such a use would not be detrimental to the public health, safety, character and welfare of Haverhill and only in cases where the word "special exception" appears in this ordinance. A special exception will be allowed if the following general conditions are met along with any other criteria stated in this ordinance:

[a] the specific site is a suitable location for such a use,

[b] property values in Haverhill not be reduced by such a use and the use will not cause undue financial burden to the Town,

[c] no nuisance or unreasonable hazard to the natural or built environment will occur,

[d] adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use.

Vehicle Service and Repair Shops: Shall include but not be limited to automobile, truck, boat, or aircraft service or repair shops.

Wetland: Defined as those areas which are delineated as poorly drained or very poorly drained soils by the United States Department of Agriculture, Soil Conservation Service in the Soil Survey Map of Grafton County as amended.

[a] poorly drained soils: Water is removed so slowly that the soil is saturated periodically during the growing season or remains wet for long periods. Free water is commonly at or near the surface for long enough during the growing season that most mesophytic crops cannot be grown unless the soil is artificially drained. The soil is not continuously saturated in layers directly below plow depth. Poor drainage results from a high water table, a slowly pervious layer within the profile, seepage, nearly continuous rainfall, or a combination of these.

[b] very poorly drained soils: Water is removed from the soil so slowly that free water remains at or on the surface during most of the growing season. Unless the soil is artificially drained, most mesophytic crops cannot be grown. Very poorly drained soils are commonly level or depressed and are frequently ponded. Yet, where rainfall is high and nearly continuous, they can have moderate or high slope gradients.

ARTICLE V
USES

5.1 WETLANDS CONSERVATION DISTRICT

PERMITTED USES

Any use that does not result in the erection of any structure or alter the ground surface configuration by the addition of fill, dredging or draining is permitted in the Wetlands Conservation District. Such uses include:

[a] agriculture, using management techniques to protect lands from soil erosion and otherwise,

[b] forestry and tree farming,

[c] water impoundments and well supplies,

[d] drainage ways, streams, creeks and other paths of normal run-off,

[e] wildlife refuge,

[f] parks and such recreation uses as are consistent with the purpose of creating the Wetlands Ordinance,

[g] conservation areas and nature trails,

[h] open space as permitted by the Town's land use regulations,

[i] access ways if essential to the productive use of the land, and if the construction and erection of such does not adversely impact the land.

SPECIAL EXCEPTIONS

Special exceptions for the undertaking of a use not otherwise permitted in the Wetland Conservation District, which may include the erection of a structure, dredging, filling, draining, or otherwise altering the surface configuration of the land, may be granted by the Board of Adjustment, if it can be shown that such proposed use will not conflict with the objective described in Article II, and if in compliance with the rules and regulations of the NH Dredge and Fill Board. Proper evidence to this effect shall be submitted to the Board of Adjustment and shall be accompained by review comments of the Grafton County Conservation District, or similar, appropriate agency, concerning the environmental effects of such proposed use upon the wetlands in question.

5.2 AQUIFER PROTECTION DISTRICT

SPECIAL EXCEPTIONS

The following uses are presumed to pose a significant threat to the aquifer and shall not be permitted unless, after formal application to the Zoning Board of Adjustment (ZBA), the board grants a special exception based on a written finding of fact that the proposed use will meet the purpose of this ordinance as well as all of the specific criteria listed for the aquifer protection district. A special exception must be granted if the applicant establishes, beyond a reasonable doubt, that all criteria for approval have been met. The board, however, may approve a special exception with conditions it finds necessary to meet the purpose and objectives of this ordinance.

A. Uses Permitted by Special Exception in the Aquifer Protection District:

Any principal use involving the production, sale, storage, or transportation of fuel oil, gasoline, or other regulated substances.
Car Washes.
Disposal, processing, or recycling of regulated substances.
Septage lagoons.
Snow dumps.
Solid waste facilities.
Storage of road salt or other de-icing chemicals.
Subsurface wastewater disposal systems other than domestic wastewater and groundwater remediation systems.
Transportation terminals.
Underground storage of fuel or other regulated substances.
Vehicle service and repair shops.
Cleaning services.
Commercial agriculture and related activities.
Excavations.
Food processing facilities.
General service and repair shops.
Laboratories and professional offices.
Manufacturing facilities.
Metal working shops.
Any use rendering impervious more than 20% of the lot area.
Any other use which is not listed above but which normally involves the manufacture, use handling, storage, or generation of regulated substances in quantities greater than those associated with normal household use.

B. Procedure for Obtaining Special Exception:

The applicant shall first apply to the Board of Selectmen for a building permit for the proposed development. The board of Selectmen will then advise the applicant whether a special exception is required from the Zoning Board of Adjustment.

C. Submission of Application to the Zoning Board of Adjustment:

In applying for a special exception under this section, the information listed below shall be submitted, along with the application fee with the formal application to the Zoning Board of Adjustment:

a. A map identifying and showing the location of the proposed use. The map shall include the following information:
   1. north arrow and date.
   2. scale of 1"=100' or larger.
   3. property lines of all affected lots.
   4. aquifer areas on affected lots and abutting lots if aquifer district crosses the property line of the lot in consideration.
   5. other significant natural features.
   6. existing and proposed manmade structures.
   7. topographic contours of no less than 5' intervals.
   8. precinct/district boundary lines

b. Names and addresses of abutting property owners.

c. A complete list of all chemicals, pesticides, fuels, and other potentially regulated substances to be used or stored on the premises in quantities greater than those associated with normal household use.

d. A description of regulated substances to be generated, indicating storage and disposal methods, accompanied by a description of measures proposed to protect all storage.

e. A sketch map showing proposed location of regulated substances.

f. Evidence of approval by the NH Department of Environmental Services of any industrial waste treatment or on-site disposal system.

g. For uses rendering impervious more than 20% of the lot area, a drainage plan including details of all proposed drainage facilities, both on-site and off-site, where applicable.

h. Maintenance schedule for all grease traps, containment vessels, and other pollution prevention devices used to handle hazardous materials on site.

i. The ZBA may require the applicant to submit other information it deems necessary to judge the potential damage to the aquifer that may result from the proposed use. The ZBA may also engage a qualified professional consultant, mutually agreed upon by the Board and applicant, to prepare an environmental impact report. The cost of obtaining any such additional information shall be paid by the applicant.

D. Criteria for Approval of Special Exception in Aquifer Protection District:

In making such a determination, the ZBA shall give consideration to the simplicity, reliability, and feasibility of the control measures proposed and the degree of threat to water quality which would result if the control measures failed. (The use must also be allowed in all other Town ordinance districts.)

Prior to granting a special exception, the Zoning Board of Adjustment must find that all of the following are true:

a. The proposed use will not have a detrimental effect on the quality of the groundwater contained in the aquifer by directly contributing to pollution, i.e. by causing an increase in any current ambient water quality parameter, or by increasing the long-term susceptibility of the aquifer to potential pollutants.

b. Any discharge to groundwater shall be permitted in accordance with NH Code of Administrative Rules, ENV-Ws 410.

c. The proposed use will not cause a significant reduction in the long-term volume of water recharge to the aquifer, or in the storage capacity of the aquifer.

d. Provision shall be made to protect against discharge or loss of regulated substances resulting from corrosion, accidental damage, spills, or vandalism through measure

such as: spill control provisions in the vicinity of chemical or fuel delivery points; secured storage areas for regulated substances; and indoor storage provisions for corrodible or dissolvable materials. For operations which allow the evaporation of regulated substances 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.

e. Where the premises are partially outside of the Aquifer Protection District, potential pollution sources such as on-site waste disposal systems shall be located outside the District to the extent feasible.

f. For any regulated substances to be produced in quantities greater than those associated with normal household use, the applicant must demonstrate the availability and feasibility of disposal methods which are in compliance with all applicable state and federal laws and guidelines.

g. To the extent practical, all run off from impervious surfaces shall be recharged on the site and diverted towards areas covered with vegetation for surface infiltration. 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. If runoff must be discharged off-site, discharge shall be contained in the recharge area.

h. In the case of excavations, earth removal shall not be carried out within four (4) vertical feet of the seasonal high water table, nor shall the maintenance or refueling of vehicles be allowed on the site.

E. Review by Other Town Agencies:

Upon receipt of the application for a special exception, the ZBA shall transmit one copy each to the Planning Board, Conservation Commission, and Health Officer, for their written recommendations. Failure of those parties to respond in writing, prior to the date of the first hearing, shall indicate approval by said parties. The necessary number of copies of the application shall be furnished by the applicant. The ZBA shall explain any departures from the recommendations, of the other town boards or officials, in its application decision.

ARTICLE VI
WETLAND INCORRECTLY DELINEATED

Where it is determined that an area has been incorrectly delineated as a wetland or that an area not so designated was subsequently found to meet the criteria for wetland designation, the Board of Adjustment shall determine whether the regulations herein have application.

The Board of Adjustment shall make their judgement under this section only upon the determination of a certified soil scientist on the basis of additional on-site investigation that the information contained on the Grafton County Soil Survey map is incorrect. All costs for such determination shall be borne by the applicant.

ARTICLE VII
VERIFICATION OF AQUIFER PROTECTION DISTRICT BOUNDARY

When the actual boundary of the Aquifer Protection District is disputed by any owner or abutter affected by said boundary, the Zoning Board of Adjustment, at the owner or abutter's request and expense, may engage the services of a professional hydrogeologist to determine the precise boundary of said district.

The Zoning Board of Adjustment shall have the authority to make the final determination as to the location of a disputed boundary and may define the boundary or area designation based thereon.

ARTICLE VIII
NON-CONFORMING USES

8.1 Wetlands Conservation District:

If at any time after the adoption of the Wetland Ordinance, any land, building or structure is being used in a lawful manner, except that such use is not in conformity with the provisions of this Ordinance, such non-conforming use of said land, building or structure may be continued. No interruption of such a non-conforming use shall prevent its continuance except as hereinafter provided in the following paragraph.

Whenever a non-conforming use has been discontinued for more than one year for any reason, such non-conforming use shall not thereafter be re-established, and the future use of the property shall be in conformity with the provisions of this Ordinance.

Any non-conforming use permitted may be expanded upon only by the approval of the Board of Adjustment, which shall first ascertain that [a] such an expansion does not create a greater nuisance or detriment and [b] the expanded use meets the requirements of this Ordinance.

8.2 Aquifer Protection District:

Any non-conforming use may continue and may be maintained, repaired and improved, unless such use is determined to pose a direct hazard to the aquifer or is actually causing some foreign substance (oils, salts, chemicals, etc.) to be introduced into the aquifer. In the latter case, the Selectmen or their agent shall order that the owner of the non-conforming use stop the offending activity or process from continuing in the District and shall seek to implement the purpose and objectives of this ordinance and the provisions of RSA 485-C, the State of NH Groundwater Protection Act.

No non-conforming use may be expanded or changed to another non-conforming use.

No non-conforming use may be renewed after it has been discontinued for a period of one (1) year or more.

ARTICLE IX
ENFORCEMENT AND ADMINISTRATION

It shall be the duty of the Board of Selectmen, and the Board is hereby given the power and authority to enforce the provisions of this Ordinance. After passage of this Ordinance, and in conjunction with the prevailing building permit system it shall be unlawful to construct a new building, make substantial improvements or make exterior dimensional additions to a building without first obtaining a permit from the Board of Selectmen or their designee. Permits must be posted on site and be easily visible.

ARTICLE X
BOARD OF ADJUSTMENT

Any order, requirement, decision or determination of the building inspector made under this Ordinance may be appealed to the Board of Adjustment as set forth in RSA 676:5.

The Board of Selectmen shall be responsible for filling vacancies and maintaining full membership on the Board of Adjustment. The Board of Adjustment shall conform in membership and term of office to the provisions of RSA 673:3 and RSA 673:5-6.

ARTICLE XI
AMENDMENTS

This Ordinance may be amended by a majority vote of any legal Town Meeting as provided by RSA 674:16.

ARTICLE XII
PENALTY

Any person, firm, or corporation violating any of the provisions of this Ordinance shall be fined not more than one hundred dollars [$100.00] upon conviction, for each day such violation exits.

ARTICLE XIII
SEPARABILITY CLAUSE

The invalidity of any provisions of this Ordinance shall not affect the validity of any other provisions.

ARTICLE XIV
RULE OF PRECEDENCE

Whenever any provision of this Ordinance is in conflict with any state, or other local ordinance, the more restrictive provision(s) shall apply.

ARTICLE XV
EFFECTIVE DATE

This Ordinance shall become effective immediately upon its passage.

Adopted March 12, 1996, Town Meeting