

**ARTICLE 4. Overlay Districts**

The regulations in this Article shall overlay and supplement the regulations in the Town of Boscawen's Zoning Ordinance and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. Except for the case of the Village Multi Use Overlay District, if any provision of this Article differs or appears to conflict with any other provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

**4.01 Wetland Conservation District (WC)**

**A. Authority**

The Wetland District is adopted pursuant to the purpose of the Zoning Ordinance to protect the public health, safety and general welfare, to provide for orderly growth of the community and is developed in accordance with applicable provisions of the RSA 674:21, Innovative Land Use Controls, item (j) Environmental characteristics zoning. The Planning Board is hereby granted the authority to administer these provisions.

**B. Statements of Purpose**

1. To prevent unnecessary or excessive expenses to the Town due to the unwise use of water resources;
2. To prevent the destruction of wetlands which provide flood protection, ground water recharge, pollution abatement;
3. To augment stream flow during dry periods and other important benefits of wetlands resources;
4. To protect existing and potential water supplies, both groundwater and surface water, public and private from potential contamination sources;
5. To protect water courses, maintain the purity and prevent the pollution of water in the watershed;
6. To insure orderly and environmentally sensitive design elements for developments near wetland environments;
7. To protect spawning grounds and habitat for wild flora and fauna;
8. To preserve and enhance the aesthetic value associated with wetland features;
9. To protect and provide wildlife habitat areas
10. To prevent the fracturing of habitats; and
11. To provide for unique and natural areas in the community.

**C. District Boundaries**

The Wetlands Conservation District shall consist of the following lands:

1. Land which meets the definition of wetland as defined in RSA 482-A:2 X, as amended.
2. Poorly drained and very poorly drained soils, commonly referred to as Group 5 and 6 Soils as discussed in the New Hampshire Department of Environmental Services Subdivision and Individual Sewage Disposal System Design Rules, Chapter Env-Ws 1000, and
3. Buffers to wetlands, prime wetlands and poorly drained soils as designated pursuant to this Section.

**D. Boundary Disputes**

1. If a boundary of the WC District is disputed by the Planning Board, applicant or abutter, the exact location shall be determined by the Planning Board with a recommendation from the Conservation Commission. The Planning Board may engage, at the applicant's expense, a wetland scientist to determine the precise location of the WC District Boundary.
2. Wetlands shall be identified in the field using the methodology as prescribed in the rules adopted under RSA 482-A.
3. The Wetland Protection District is a zoning overlay district, which imposes additional requirements and restrictions to those of the underlying base zoning. Uses not permitted in the base zone shall not be permitted in this District. In cases of conflict between the requirements of this District and the requirements presented elsewhere in this Ordinance, the more restrictive requirement shall apply.

**E. Buffers to wetlands, prime wetlands and poorly or very poorly drained soils**

1. A buffer shall consist of undisturbed land around wetlands, prime wetlands or poorly and very poorly drained soils, except for driveway crossings, provided all applicable local and state wetland permits have been approved.
2. All prime wetlands and wetlands greater than one (1) acre in area shall be protected by a buffer zone of one-hundred feet (100').
3. The buffer from an on-site waste disposal system shall be a minimum of one hundred (100').

4. The buffer from underground chemical and fuel tanks shall be a minimum of two hundred (200').
5. The location of any structure shall be a minimum of fifty feet (50').
6. The location of a parking and/or loading area which can accommodate greater than five vehicles shall be minimum of seventy-five (75').
7. All forestry and agricultural activities within one hundred feet (100') shall be undertaken using Best Management Practices and take all action to avoid erosion and siltation into the wetland. A permit by notification is granted to applicants by the State with copies sent to the Town. The Conservation Commission may review the permits and make inquiries if necessary.
8. All construction activities within one hundred feet (100') shall be undertaken using Best Management Practices and take all action to avoid erosion and siltation into the wetland. Construction activities within 100' of a wetland shall be reviewed by the Conservation Commission and any proposed impact to the wetlands must receive a permit from NHDES.
9. Required wetland buffers on parcels for which permits, subdivisions or site plans have been approved shall be clearly marked by the applicant at 50' intervals with signs approved by the Conservation Commission.

**F. Uses in Wetland and Buffer Areas:**

1. Prohibited Uses:
  - a. Alteration of natural drainage systems resulting in change in the flow of water, water level or water table, including changes to the environment which could impact abutting or downstream property, hydrologically connected water and or wetland resources, and which could have an adverse impact to the functions and values of wetlands and wetland buffers as determined by a wetland scientist's evaluation in accordance with the New Hampshire Wetlands Bureau.
  - b. Bulk storage of chemical, petroleum products, toxic and hazardous materials.
  - c. Junk yards
  - d. Landfills
  - e. Outdoor activities involving any motorized sport equipment or vehicles including but not limited to dirt-bike, motorcross, three-wheeled vehicles, and 4-wheeled vehicles and other similar equipment or vehicle which may be applicable.
  - f. Recontouring and regrading of land
  - g. Resource recovery facilities
  - h. Salt storage
  - i. Snow and ice dumping and disposal from roadways and parking areas.

- j. Solid or hazardous waste facilities
- k. Transfer stations
- l. Use of the land which was cause the fracturing of habitat
- m. Use of the land which will impede the natural functions of vernal pools
- n. Wells
- o. Any activity which is not listed below in F. 2, Permitted Uses, shall require a variance from the Zoning Board of Adjustment and must meet the statement of purpose in this section.

2. Permitted Uses:

- a. Activities incidental to ordinary residential use such as normal ground maintenance, mowing, trimming, removal of dead or diseased vegetation, but not regrading or recontouring land or total clearing of vegetation. Mowing shall be restricted to once a year during the fall.
- b. Agricultural activities utilizing the most recent best management practices and soil conservation practices recognized and utilized by the USDA Natural Resources Conservation Service, NH Department of Agriculture and the UNH Cooperative Extension for reducing sedimentation caused by erosion, and protecting wetlands from pollution caused by fertilizers, pesticides, herbicides and other chemicals.
- c. Construction, repair and or maintenance of streets, roads and other public access ways provided all applicable local, state and federal permits have been approved including but not limited to wetland impacts permits.
- d. Educational (outdoor) activities for passive recreation uses such as walking trails.
- e. Fire protection ponds
- f. Forestry and Logging Operations using best management practices as described in Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire and only if in compliance with all applicable local, state and federal permits and approvals which may apply.
- g. Outdoor activities including hunting, fishing, swimming, boating.
- h. Scientific research which will not hinder or damage the wetland environment.
- i. Uses permitted with the base district, unless otherwise prohibited in the Wetland Conservation Overlay Distict.
- j. Water impoundment for the purpose of creating on-site detention of stormwater shall only be permitted if designed by an engineer licensed by the State of NH and a landscape screen of at least thirty feet in width (30) is permanently provided and maintained between the sedimentation basin and the developed area, and only if all applicable state approvals are granted.
- k. Wildlife or fisheries management
- l. Wildlife refuges, parks, and recreation uses consistent with the purpose and intent of this ordinance to preserve and protect wetland (such uses include nature trails or conservation areas).

m. Snowmobile trails so long as the ground is covered with snow.

**G. Non-conforming use or structure**

No nonconforming use or structure shall be changed, expanded or altered in such a way as to infringe or encroach upon any wetland or wetland buffer areas as defined by this section.

**H. Conditional Use Permits**

1. Any activity within the WC District must be granted a conditional use permit from the Boscawen Planning Board. An application for a conditional use permit must be submitted in conjunction with a site plan or subdivision to the Planning Board. If no subdivision or site plan review is required, the Board shall review the application with proper abutter and public notice at its next regularly scheduled meeting. The Planning Board shall refer conditional use permit applications to the Conservation Commission for review and comment prior to the public hearing on the application.
2. The Planning Board shall consider the application to determine if the proposed use meets the following conditions:
  - a. The proposed activity or use is consistent with the purposes of the WC District.
  - b. The proposed activity minimizes degradation to or loss of wetlands and wetland buffers and minimizes any adverse impact to the functions and values of wetlands and buffers.
  - c. The proposed activity cannot be located practicably elsewhere on site.
  - d. Federal and/or state permits have been applied for and received for the proposed activity.
3. The Planning Board may attach any conditions to its approval including but not limited to extending the buffers, requiring additional vegetation plantings, or reduction in proposed impervious surfaces.

## **4.02 Floodplain Conservation District (F)**

### **A. Authority**

This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Boscawen Floodplain Development Ordinance. The following regulations shall apply to lands designated a floodplain and/or flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the Town of Boscawen, N.H.", including the associated Flood Insurance Rate Maps, and Flood Boundary & Floodway Maps of the town dated July 16, 1979, which are hereby declared to be a part of this ordinance and are incorporated by reference.

### **B. 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 Boscawen.

**Area of Shallow Flooding** means a designated A0, AH, or V0 zone on the Flood Insurance Rate Map with a one-percent or greater annual possibility of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet-flow.

**Area of Special Flood Hazard** is the land in the floodplain within the Town of Boscawen subject to a one-percent or greater possibility of flooding in any given year. The area is designated as zone A on the FHBM, and designated on the FIRM as zones A or A1-30.

**Base Flood** means the flood having a one-percent possibility of being equaled or exceeded in any given year.

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

**Breakaway wall** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation.

**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.

**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, or (2) the unusual and rapid accumulation or runoff of surface waters from any source.

**Flood Boundary and Floodway Map** (Floodway Map) is an official map of the Town of Boscawen, on which FEMA has delineated the "Regulatory Floodway." This map should not be used to determine the correct flood hazard zone or base flood elevation. The Flood Insurance Rate Map (FIRM) will be used to make determinations of flood hazard zones and base flood elevations.

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

**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 Boscawen.

**Flood Insurance Study** - see "Flood elevation study."

**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 which have been 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 as defined by RSA 674:31, which is transportable in one or more sections, which in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and is designed to be used as a dwelling 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 180 days. Manufactured housing shall not include presite built housing as defined in RSA 674:31-a.

**Mean Sea Level** means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**100-Year Flood** - see "base flood."

**Recreational Vehicle** means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self propelled or permanently towed by a light duty truck; and (d)

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 increasing the water surface elevation. These areas are designated as floodways on the Flood Boundary and Floodway Map.

**Special Flood Hazard Area** means an area having flood, mud slide, and/or flood-related erosion hazards, and shown on an FHBM or FIRM as zone A or AI-30 (see "Area of Special Flood Hazard").

**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.

**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 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.

**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 50 percent 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 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."

**Water Surface Elevation** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

### **C. Permit Provisions**

The Building Inspector and/or Zoning Officer 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, and
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.

### **D. Water and Sewer Provisions**

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 and/or Zoning Officer 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.

### **E. Floodproofing Certifications**

For all new or substantially improved structures located in Zones A or A1-30, the applicant shall furnish the following information to the Zoning Officer:

1. The as-built elevation (in relation to NGVD) 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 NGVD) to which the structure was floodproofed.
3. Any certification of floodproofing.

The Building Inspector and/or Zoning Officer shall maintain for public inspection and shall furnish such information upon request.

**F. Permits Withheld**

The Building Inspector and/or Zoning Officer 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.

**G. Permits in Riverine Areas**

1. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector and/or Zoning Officer, in addition to the copies required by the RSA 483-A:1-b. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector and/or Zoning Officer, including notice of all scheduled hearings before the Wetlands Board.
2. The applicant shall submit to the Building Inspector and/or Zoning Officer certification provided by a registered professional engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
3. Along watercourses with a designated Regulatory Floodway 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. In zone A the Building Inspector and/or Zoning Officer shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that development meet the floodway requirements of this section.

4. Along watercourses that have not had a Regulatory Floodway designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within zones AI-30 on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

## **H. Flood Zones**

1. In special flood hazard areas the Building Inspector and/or Zoning Officer shall determine the 100 year flood elevation in the following order of precedence according to the data available:
  - a) In zones AI-30, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM or FHBM.
  - b) In unnumbered A zones the Building Inspector and/or Zoning Officer shall obtain, review, and reasonably utilize any 100 year 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 plan approvals).
2. The Building Inspector and/or Zoning Officer's 100 year flood elevation determination will be used as criteria for requiring in zones A and AI-30 that:
  - a) All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100 year 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 100 year flood level; or together with attendant utility and sanitary facilities, shall:
    1. Be floodproofed so that below the 100 year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
    2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
    3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.

3. 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 level; 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.
4. Recreational vehicles placed on sites within zones A1 - 30, AH, and AE shall either (1) be on the site for fewer than 180 consecutive days, (2) be fully licensed and ready for highway use, or (3) meet all standards of Section 60.3 (b)(1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c)(6) of Section 60.3.
5. 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: (1) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage; (2) the area is not a basement; and (3) 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 openings having a total net area of not less than one 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 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.

**I. Variances and Appeals:**

1. Any order, requirement, decision or determination of the Building Inspector and/or Zoning Officer made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
2. 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:
  - a) That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
  - b) 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.

- c) That the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 3. The Zoning Board of Adjustment shall notify the applicant in writing that: (1) 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 \$25 for \$100 of insurance coverage, and (2) 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.
- 4. The community shall: (1) maintain a record of all variance actions, including their justification for their issuance, and (2) report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

#### **4.03 Aquifer Protection Overlay District (AP)**

##### **A. Authority**

The Aquifer Protection District is adopted pursuant to the authority granted under RSA 674:17, Purposes of the Zoning Ordinance and RSA 674:21 I, Innovative Land Use Controls (j) Environmental characteristics zoning. The Planning Board is authorized to administer the provisions of this section.

##### **B. Statements of Purpose**

The Town of Boscawen hereby creates the aquifer protection overlay district for the following reasons:

1. To promote the health, safety and general welfare of the community;
2. To promote the goals and objectives of the Master Plan;
3. To promote a healthy economic climate of the Town of Boscawen and surrounding communities by ensuring that drinking water supplies are of high quality and quantity;
4. To prevent degradation of the natural environment and water resources necessary to sustain life;
5. To protect, preserve and maintain existing and future water supply sources of the Town of Boscawen by regulating the uses of land over known aquifers and their recharge areas;
6. To protect such water resources from contamination caused by adverse or incompatible land use practices or development and minimized potential threats from water pollution;
7. To protect individual wells and community and private water sources from degradation and depletion due to inadequate recharging capabilities and inappropriate land uses.

##### **C. Establishment and Location of the District**

The Aquifer Protection District shall include all land designated on the U.S. Department of Interior, U.S. Geological Survey map titled: Geohydrology and Water Quality of Stratified-Drift Aquifers in the Upper Merrimack River Basin, South-Central New Hampshire. Water Resources Investigations Report 95-4123 plates 4 & 8. This map is available for review at the Boscawen Town Office during regular business hours.

The Aquifer Protection District is a zoning overlay district, which imposes additional requirements and restrictions to those of the underlying base zoning. Uses not permitted in the base zone shall not be permitted in this District. In cases of conflict between the requirements of this District and the requirements presented elsewhere in this Ordinance, the more restrictive requirement shall apply.

**D. District Boundary Disputes**

When the boundary of the Aquifer Protection District is in dispute, the services of a NH licensed professional hydrogeologist with knowledge of water resources mapping or other specialized areas of the profession may be retained at the expense of such disputing party.

The report prepared by the NH licensed professional hydrogeologist shall be submitted to the Planning Board and shall contain the following information:

1. A detailed topographic layout of the subdivision and or area to be developed, prepared by a NH licensed land surveyor;
2. A detailed geologic map including soils data of the subdivision and or area including a written report of on-site field inspection and test boring data;
3. Any mapping resources, hydrogeologic reports, or information to document the findings and reasoning for the boundary dispute.

If this new data is acceptable to the Planning Board and would lead to a shift in the boundary of the AP District, the Planning Board shall, in approving a conditional use permit application, deem the boundary location to be the correct legal boundary for the purposes of this section.

**E. Uses in the Aquifer Protection District**

1. The uses permitted in the underlying zoning district are permitted in the Aquifer Protection District with a conditional use permit, provided that all other necessary permits have been obtained, and that they are not specifically prohibited as listed in section E. 2. Conditional use permits may be granted in accordance with section F, General Performance Standards.
2. The following uses are specifically prohibited:
  - a) Sanitary landfills, disposal of sewage sludge, disposal of solid wastes other than brush and stumps, and disposal of brush and stumps in accordance with less than 4 feet of clearance above the observed maximum water table;
  - b) Stockpiles of road salt or other ice-control chemicals in quantities greater than 200 pounds dry weight, unless storage is under cover. This includes all mixtures of sand and salt;
  - c) Dumping of snow from outside the AP District;
  - d) Subsurface storage of petroleum products;
  - e) Excavation of sand or gravel except where the land owner can demonstrate through hydrogeological studies or otherwise that there will be no adverse effects on the aquifer;

- f) Any other use which involves as principal activity the manufacture, storage, use, transportation, or disposal of toxic or hazardous material, except as may be granted by conditional use permit by the Planning Board.

**F. Conditional Use Permit**

The following shall apply to all conditional use permits and development proposals in the Aquifer Protection District, which require Subdivision and or Site Plan review by the Planning Board.

1. The Planning Board shall request written input from the Conservation Commission on all development applications within the Aquifer Protection District which require Subdivision and or Site Plan review by the Planning Board. The Conservation Commission shall be given thirty (30) calendar days to respond. The comments of the Conservation Commission shall be advisory in nature, however, the Planning Board may request additional information from the applicant if such issues are identified by the Conservation Commission and or Planning Board and which warrant additional review.
2. The applicant shall submit a complete list of all chemicals, pesticides, fuels and other potentially toxic or hazardous materials to be used or stored on the premises, including locations and estimated quantities, along with proposed procedures for loading, unloading, and inventory control. An acceptable contingency plan for all permitted facilities must be prepared for preventing hazardous materials from contaminating the aquifer should flood, fire, or other natural catastrophes, equipment failure or releases occur.
3. All infiltration practices shall be preceded by oil, grease, and sediment traps or other best management practices to facilitate removal of contamination.
4. Evidence of approvals from State or Federal agencies, where required, must be submitted.
5. The Planning Board shall give consideration to the simplicity, reliability, and feasibility of the pollution control measures proposed and the degree of threat to water quality which would result if the control measures failed.
6. In order to grant a conditional use permit, the Planning Board must find that:
  - A. The use meets the intent of this section and its criteria;
  - B. The use will not, during construction or thereafter, have an adverse impact on any aquifer or recharge area in the AP District;
  - C. The use will not adversely affect an existing or potential domestic or municipal water supply;

- D. The use is consistent with existing and future development of surrounding areas; and
- E. Periodic monitoring may be required by the Planning Board.

**G. General Performance Standards**

The following general performance standards shall also apply:

1. All private water wells shall be maintained in a proper condition to conserve and protect groundwater resources and shall not be a source or cause of contamination or pollution of the water supply of any aquifer.
2. Streets, roads and parking areas shall be constructed so that the need for direct application of road salt is minimized for winter safety, and so that run-off from such uses is channeled to avoid or minimize groundwater contamination.
3. Grading and removal of vegetation at a development site shall be minimized and erosion and sediment control measures shall be in place and properly installed.
4. Run-off from impervious surfaces shall be recharged on- site by stormwater infiltration basins or similar systems covered by natural vegetation. Such run-off shall not be discharged directly to rivers, streams, wetlands, or other surface water bodies.

**H. Non-conforming Uses**

Upon adoption of this ordinance, existing uses in their current state may continue without further review provided that such existing use is in compliance with all conditions of an approved site plan and or subdivision plans in terms of elements related to groundwater protection issues, including but not limited to: use of best management practices; stormwater system designed and functioning per the approved plan; drainage plan designed and functioning according to the approved plan; septic systems approved, designed and maintained in accordance with applicable laws and regulations; and overall site design elements including amount of impervious surface is in compliance with the approved plan for said site.

**I. Definitions**

1. **Aquifer:** A geological formation, group of formations, or part of a formation composed of rock, sand or gravel capable of storing groundwater to wells and springs, for municipal or private water supplies.

2. **Aquifer, Stratified Drift:** 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.
3. **Containment, Secondary Facility:** A second tank, catchment pit, pipe or vessel that limits and contains liquid or chemical leaking or leaching from a primary containment area; monitoring and recovery are required. 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.
4. **Development:** The carrying out of any construction, reconstruction, alteration of surface or structure or change of land use or intensity of use.
5. **Facility:** Something that is built, installed or established for a particular purpose.
6. **Groundwater:** Subsurface water that occurs beneath the water table in soils and geologic formations.
7. **Hazardous material:** A material which is defined in one or more of the following categories: ignitable, carcinogenic, explosive, highly toxic, moderately toxic, or corrosive, or as otherwise defined by any local, state or federal definition of such materials.
8. **Impervious:** Not readily permitting the infiltration of water.
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. **Snow dump:** The location where snow, which is cleared from roadways or parking areas is placed for disposal.

#### **4.04 Shoreland Protection District (SP)**

**A. Authority**

The Shoreland Protection Overlay (SP) District is established in accordance with the provisions of RSA 483-B:8, Shoreland Protection Act, Municipal Authority.

**B. Purpose and Intent.**

The purpose of the SP District is to establish standards for the use and development of shoreland of the ponds, tributary streams and the Merrimack and Contoocook Rivers within the Town of Boscawen. The intent of this chapter is to assure the protection of the shoreland and land adjacent to the shoreland to minimize impact to such areas, to develop standards for uses in district, to offer additional protection to that provided in RSA 483B the State Comprehensive Shoreland Protection Act, and to implement goals and objectives for the protection of natural features as discussed in the Boscawen Master Plan. These standards serve to:

1. Provide safe and healthy water for use by people, animals and for recreational uses;
2. Protect and preserve the scenic and natural visual attributes of the river environment;
3. Prevent and control of water pollution;
4. Protect fish, bird, wildlife and wildlife habitat;
5. Reduce or eliminate flooding and accelerated erosion;
6. Protect building and lands from flooding;
7. Conserve natural beauty and open space;
8. Provide for economic development in proximity to the water and yet provide for the enhancement and preservation of such natural features;
9. Protect wetlands and their important natural functions;
10. Maintain water quality and related stream flow during low flow periods;
11. Protect the economic benefits that the natural beauty and scenic qualities the shoreland and river provides;
12. Conserve and protect the natural beauty of the Town of Boscawen; and
13. Prevent uncoordinated, unplanned and piecemeal development along the river resulting in potentially negative results to the area and the river itself.

**C. Establishment of the SP District.**

The SP District shall include all land within 150 feet of the reference line of the ponds listed below and the Merrimack and Contoocook Rivers in the Town of Boscawen as defined by the ordinary high water mark which is defined in RSA 483-B:4 definitions, and as may be amended from time to time.

The ponds covered under this ordinance include:

1. Patenaude's Pond
2. Olsen Pond
3. Flanders Pond
4. Moore's Pond
5. Couch Pond (also known as Little Pond)
6. Morse Hill Pond (also known as Moss Hill)
7. Walker Pond
8. County Farm Pond
9. Stirrup Iron Pond

For the tributary streams listed below, the SP District shall be a minimum of 25' from the ordinary high water mark, and shall increase based on the steepness of the stream bank. The buffer shall extend outward to include all adjacent 100 year floodplains, and steep slopes greater than 25% adjacent to the minimum buffer.

The tributary streams include:

1. Tannery Brook
2. Choate Brook
3. Cold Brook
4. Moores Brook
5. Glines Brook
6. Beaverdam Brook
7. Stirrup Iron Brook
8. South Branch Stirrup Iron Brook
9. Cabot Brook

**D. Uses in the SP District.**

1. The uses permitted in the underlying zoning district are permitted in the Aquifer Protection District with a conditional use permit, provided that all other necessary permits have been obtained, and that they are not specifically prohibited as listed in section E. 2. Conditional use permits may be granted in accordance with section F, General Performance Standards.
2. The following uses are specifically prohibited:
  - a) Auto repair and body shops
  - b) Bulk storage of chemicals, fertilizers, pesticides and herbicides
  - c) Bulk storage of petroleum products or hazardous materials
  - d) Car washing facilities
  - e) Chemical and biological laboratories
  - f) Commercial painting, wood preserving and furniture stripping

- g) Dry cleaning
- h) Dumping or disposal of snow and ice collected from roadways or parking areas
- i) Electronic circuit assembly
- j) Laundromats and other high volume water users unless connected to the municipal sewer system
- k) Metal plating
- l) Paved parking areas greater accommodating more than (10)ten vehicles
- m) Photographic processing
- n) Printing establishments
- o) Processing of excavated materials
- p) Sand and gravel operations as defined in RSA 155-E, Local Regulations, Excavation
- q) The establishment or expansion of salt storage yards, automobile junkyards, and solid and hazardous waste facilities.

**E. Provisions for Subsurface waste disposal systems**

1. All new lots and any resubdivision plan which will reduce the lot area served by a septic system, shall be designed and installed in accordance with the NHDES Division of Water Supply and Pollution Control publication “Subdivision and Individual Disposal System Design Rules, Env-W-s 1000. A reserve area shall also be shown on the plan, indicating there is sufficient area on the parcel to accommodate a new system should a failure occur.
2. All septic systems shall be a minimum of one hundred (100) feet from the ordinary high water mark.

**F. Development Standards**

1. New lots created within this overlay district shall have frontage and access from an approved street and shall not base the frontage requirement on the shoreland frontage.
2. Cluster developments or condominium developments which grant exclusive shorefront access to dwelling units shall have a minimum frontage of 150 feet of shoreland per dwelling unit.
3. Whenever a property is developed or redeveloped, a vegetative buffer shall be maintained or established within a minimum of fifty feet (50 feet) of the reference line. The Planning Board may require additional buffer based on the characteristics of the water body and the proposed use.

4. All construction and or development activities shall incorporate standards for low impact development erosion and sedimentation control in accordance with current and acceptable standards.
5. Roads and driveways shall be set back at least fifty (50) feet from the reference line and shall be designed to minimize disturbance to the existing natural vegetation and topography, except for bridges and bridge approaches and access ways for fire-fighting equipment.
6. Water dependent uses and structures, including, but not limited to, boathouses, beaches, docks and moorings are permitted subject to all federal and or local permits and regulations which may apply, i.e. Wetlands, Army Corp of Engineers.
7. For all development requiring a building permit in the SP District, the following information shall be submitted with the building application: current photograph of the lot that displays the extent of the existing vegetative buffer prior to any human disturbance; a sketch plan showing existing stands of trees, shrub groups, grassed areas, exposed soil and rock outcrops; and a sketch showing all existing and proposed buildings, green space, septic system and areas of disturbance.

#### **H. Land Clearing for Agricultural Purposes**

All agricultural activities and operations as defined in RSA 21:34-a and as governed by RSA 430, including the use of animal manure, lime, wood ash, irrigation, and the clearing of land for agricultural utilization, and other agricultural technologies, shall be exempt from the provisions of this ordinance, provided such activities and operations are in conformance with the most recent best management practices determined by the United States Department of Agriculture Natural Resources Conservation Service, the United State Department of Agriculture, Cooperative Extension Service and the Department of Agriculture. Persons carrying out such agricultural activities and operations in the protected shoreland shall work directly with the local representative of the above agencies for their particular property.

**4.05 Multi Use District (MU)**

**A. Authority**

The Multi Use District is adopted pursuant to the authority granted under RSA 674:17, Purposes of the Zoning Ordinance and RSA 674:21, Innovative Land Use Controls. The Planning Board is authorized to administer the provisions of this section.

**B. Statements of Purpose**

The Town of Boscawen hereby adopts the Multi Use District for the following purposes:

1. To recognize and encourage economic development along Boscawen's main transportation corridors;
2. To provide for mixed uses within the overlay district and multiple uses on single sites;
3. To promote the viability of a historic village streetscape by encouraging reuse of existing structures;
4. To create regulations for the harmonious development of the King Street corridor by creating a unique feel for Boscawen through landscaping and architectural standards; and
5. To allow the Town and the residents of the district to take advantage of economic opportunities and a more flexible pattern of residential and business development.

**C. Establishment and Location of the District**

The MU District shall be measured to a depth of 500' from either side of the centerlines of King Street, North Main Street, High Street and D.W. Highway from the split to Goodhue Road. The district shall also include land between King Street and North Main Street as shown on the Official Zoning Map.

**D. Permitted Uses**

1. All uses permitted in the underlying Districts are permitted.
2. Mixed residential and business uses are permitted on a single site and within the district as a whole.

**E. General Provisions**

Business uses shall be compatible with adjacent residential uses and shall be designed to enhance the village atmosphere within the district.

**F. Conditional Use Permits**

Property owners residing on the premises who wish to open a business on site may apply to the Planning Board for a conditional use permit. The following

special conditions must be met prior to the Planning Board issuing a conditional use permit. In granting a conditional use permit, the Planning Board may attach any reasonable conditions to the approval to insure the protection of the historic and residential character of the neighborhood:

1. Business uses shall be carried on within suitable buildings on the property;
2. There shall be a limited display of goods or wares visible from the street;
3. The buildings or premises occupied shall not be rendered objectionable or detrimental to the character of the neighborhood because of the exterior appearance, emission of odor, gas, smoke, dust, noise, electrical disturbance or in any other way. In a multi-family dwelling, a business use shall in no way become objectionable or detrimental to any residential use within that multi-family structure.
4. All parking areas shall be effectively screened from abutting and facing residential properties by an appropriate buffer. The Planning Board shall determine the necessity of screening to be constructed by new businesses to restrict the amount of noise and light affecting abutting and facing residential properties. Appropriate screening methods can include, but are not limited to, solid fencing with a minimum of four (4) feet in height or a dense planting of evergreen materials that are a minimum of three (3) feet in height at the time of planting.
5. There shall be no advertising on the premises other than as provided in Dimensional Table of Signs and Article 11, Signs.
6. Any conversion of residential structures into commercial/business space requires site plan review by the Planning Board.
7. Conversions to multifamily use require a Special Exception from the Zoning Board as well as site plan review by the Planning Board.
8. Where business and residential uses are mixed on a single site, there must be a minimum of 600 square feet living area.

**G. Special Exceptions**

Where a businesses use not otherwise permitted by right is proposed as the sole occupant of a property, or where the property owner does not reside on site, the applicant must obtain a Special Exception from the Zoning Board of Adjustment prior to a site plan approval from the Planning Board. In addition to the criteria for Special Exceptions in Article XXX, the Zoning Board shall also use the criteria set out above in section 4.05 F.