

ARTICLE XV WATERSHED OVERLAY DISTRICT

XX.1 Background

- a. The Town of Sutton shares with the State of New Hampshire jurisdiction and responsibility to protect and maintain the quality of its public water bodies, a valuable resource, for the greatest public benefit.
- b. The watersheds in the Town of Sutton are valuable and fragile natural resources and have direct influence on the integrity of the water quality of the public water bodies which are Billings Pond, Blaisdell Lake, Gile Pond, Kezar Lake, Loch Lyndon (Newbury) Reservoir and Russell Pond.
- c. The Kezar Lake water quality was restored in the early 1980's after years of phosphorus loading from the Lyon Brook Watershed. This restoration was accomplished thanks to the efforts of many private citizens, the Environmental Protection Agency and the New Hampshire Department of Environmental Services.

XX.2 Purpose

- a. The creation of performance standards for certain land use activities within the town watersheds will provide for increased long-term protection of the town public water bodies and their watersheds and would help prevent a recurrence of the problems similar to those experienced at Kezar Lake in the past.
- b. Under current local and state laws the potential exists for random, piecemeal or uncoordinated uses of the land within watersheds in the Town of Sutton, which could have significant negative impact on the water quality of its public water bodies, and their tributaries.
- c. Where the Town of Sutton watersheds transcend municipal boundaries, the Town of Sutton will seek opportunities to work cooperatively with the neighboring towns toward the common objective of improved water quality within the subject watersheds. In the spirit of a regional approach to resource management, the Town will foster cooperation among regional and state officials to further enhance the quality of water found in this overlay district.

XX.3 Authority and Statement of Intent

- a. Pursuant to RSA 674: 21, the Town of Sutton adopts Watershed Overlay District, and accompanying regulations to ensure the protection and preservation of the town watersheds and the public water bodies within the Watershed Overlay District from the effects of point and non-point source pollution or sedimentation . The establishment of the Watershed Overlay District and the adoption of these regulations are intended:
 - (1) to protect public health,
 - (2) to protect aquifers, which serve as existing or potential water supplies, and the aquifer recharge systems,
 - (3) to protect surface waters and wetlands contiguous to surface waters,

- (4) to preserve and protect the natural beauty of the town watersheds and public water bodies,
 - (5) to protect the natural areas and wildlife habitats within the Watershed Overlay District by maintaining ecological balances,
 - (6) to prevent the degradation of the water quality through the regulation of land uses and development within the Watershed Overlay District, and
 - (7) to protect property values that affect the tax base of the Town of Sutton.
- b. Within this district, and in the event of a conflict between the requirements of this section and other provisions of the Sutton Zoning Ordinance or state law, the more stringent requirement shall govern.

XX.4 Applicability

- a. The special provisions established herein shall apply to all new development proposals and to potential contaminating activities within the Watershed Overlay District. All such proposals and activities shall be subject to the review requirements set forth in Section XX.8. In addition, all such proposals and activities will be required to demonstrate that they shall “do no harm” to the town’s public water bodies. The boundaries of the Watershed Overlay District have been delineated by the Planning Board using current location data. The Watershed Overlay District is shown on the master zoning map kept on file in the Town Hall.
- b. The boundaries of the Watershed Overlay District may be identified through drainage, groundwater and soils analyses and are considered to be essential to the protection of the watersheds from the effects of point and non-point source pollution or sedimentation. These boundaries may be modified as necessary by the Planning Board as new data becomes available.

XX.5 Administration

- a. General: The Sutton Planning Board shall have sole and exclusive authority to administer the provisions of the Watershed Overlay District. The Planning Board is further authorized to adopt amendments to the subdivision regulations in order to further administer the requirements of this section. All new development proposals and other potential contaminating activity occurring wholly or partly in an area within the Watershed Overlay District shall be subject to this Ordinance and to review and approval by the Planning Board as specified herein. Such review and approval shall be in addition to that required by statute, other provisions of the Sutton Zoning Ordinance or Planning Board’s rules or regulations. Such review, approval, and all conditions attached to the approval shall be properly documented before issuance of any building permit by the Town.
- b. Enforcement: The Enforcement of these provisions shall adhere to the provisions of Section XXX.XX of the Sutton Zoning Ordinance.

XX.6 Definitions

- a. Associated Wetlands: Those wetlands that are within the designated watershed and are contiguous to a stream that flows directly or indirectly into a public waterbody or are contiguous to a public waterbody.

- b. Best Management Practices: As defined in “Innovative Stormwater Treatment Technologies, Best Management Practices Manual-May 2002” and “Best Management Practices to Control Non-Point Source Pollution, A Guide for Citizens and Town Officials-January 2004” prepared by the New Hampshire Department of Environmental services and “Buffer for Wetlands and Surface Waters, a guidebook for New Hampshire Municipalities” May 1997 or any updated versions thereof.
- c. Buffer Zone: A naturally vegetated, undisturbed upland area adjacent to a wetland or surface water, sufficient in size to mitigate runoff effects harmful to water quality.
- d. Contamination: Man induced sedimentation, point and non-point source pollution, septage, or the discharge of hazardous materials. Contaminants include, but are not limited to; pesticides, fertilizers, animal wastes, sediments, nutrients, and heavy metals that are deposited on the ground surface and that may flow into and pollute nearby surface waters.
- e. Development: Any land disturbing activity such as, but not limited to, building construction, change in use, grading, road building, pipe laying, or other activity resulting in a change in the physical character of any parcel of land.
- f. Do No Harm: No statistically significant measurable increase in phosphorous or nitrogen at the inlet of a public waterbody from a stream.
- g. Hazardous Materials: As defined in Superfund Amendment and Reauthorization Act of 1986 and Identification and Listing of Hazardous Wastes, 40 C.F.R. §261 (1987)
- h. Hydrology: The study of the earth’s waters, their distribution and the cycle involving precipitation, infiltration into the soil and evaporation.
- i. Impervious surface: An area whose water absorbing characteristics are greatly reduced as compared to the natural land and therefore less easily penetrated by moisture including, but not limited to, roads, driveways, parking lots, sidewalks, and roofs.
- j. Low-Impact Development (LID): An approach to site development and design that provides increased opportunities for stormwater infiltration and increased hydrologic function within a watershed.as defined in New Hampshire Environmental Services Fact Sheet WD-WMB-17, “Low-Impact Development: Taking Steps to Protect New Hampshire’s Surface Waters”, 2005 or any updated versions thereof.
- k. Mean High Water Mark: For natural fresh water bodies without artificial improvements, the natural mean high water level as determined by the Department of Environmental Services. (RSA 483-B:4XVII(a))
- l. Point and non-point source pollution: Point pollution comes from a single source, such as the discharge from a drainage pipe. Non-point pollution comes from multiple sources such as rain water run-off.
- m. Potential Contaminating Activity: Activities that have the potential to create a new discharge of contaminants or to increase the discharge of contaminants to surface or ground-waters.
- n. Public Water Body: For the purpose of the Sutton Watershed Overlay District the following bodies of water: Billings Pond, Blaisdell Lake, Gile Pond, Kezar Lake, Loch Lyndon (Newbury) Reservoir and Russell Pond.
- o. Sedimentation: The deposition of sand, silt, soil or other matter into a watercourse or wetland, including that resulting from post-development surface runoff.
- p. Storm event: A period of sustained rainfall with a minimum total accumulation of 0.25 inches of precipitation over a 24 hour period.
- q. Storm water: Surface water runoff from a non point source caused by a storm event.
- r. Stream: A water course that flows for sufficient times of the year to be designated as a perennial or intermittent stream on the most current U.S. Geological Survey Maps (USGS).

- s. Watershed: The area that drains into the public water bodies.
- t. Wetland: An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to swamps, marshes, bogs and similar areas.

XX.7 Use Regulations

- a. Permitted uses, special exception uses, accessory uses, dimensional standards and special requirements established by the underlying zoning district shall apply, except as modified below.
- b. The following uses shall be specifically prohibited within the Watershed Overlay District:
 - (1) Storage or production of hazardous materials as defined in either or both of the following:
 - (a) Superfund Amendment and Reauthorization Act of 1986.
 - (b) Identification and Listing of Hazardous Wastes, 40 C.F.R. §261 (1987)
 - (2) Disposal of hazardous materials or solid wastes
 - (3) Treatment of hazardous material, except rehabilitation programs authorized by a government agency to treat hazardous material present at a site prior to the adoption of this ordinance
 - (4) Dry-cleaning, dyeing, printing, photo processing and any other business that stores, uses, or disposes of hazardous material, unless all facilities and equipment are designed and operated to prevent the release or discharge of hazardous materials and have undergone an inspection by the Town of Sutton Code Enforcement Officer or qualified consultant, at applicant's expense, to certify they are in compliance with hazardous material regulations
 - (5) Disposal of septage or septic sludge, as defined by New Hampshire Solid Waste Rules Env-Wm101-300 & 2100 - 3700
 - (6) Automobile service and repair stations
 - (7) Junkyards and salvage yards

XX.8 Review requirements for Development in the Watershed Overlay District

- a. Applications for subdivision of land and for site plan review and approval that involve land disturbing activities are subject to all review requirements of this Section, including the requirement in XX.8b that they shall be accompanied by a hydrologic study. Applications for new home construction need not be accompanied by a hydrologic study, but must meet the other review requirements of this Section. New home construction applications must include a storm water management and erosion control plan prepared by a licensed engineer as set forth in XX12b. Applications for additions to existing buildings and/or outbuildings must include an erosion control plan.
- b. Any application for a land development proposal involving the subdivision of land or site review and approval, occurring wholly or partly in the Watershed Overlay District, shall be submitted to the Planning Board for approval and shall be accompanied by a hydrologic

study prepared in accordance with the requirements set forth in Section XX.9 below. Said study must document, in a manner acceptable to the Planning Board, that the land development proposed would provide the same or greater degree of water quality protection as existed on the site(s) in question at the time the application is made.

- c. All new development within the Watershed Overlay District will be evaluated by the Planning Board to ensure that:
 - (1) Man induced new non-point source pollution is prevented to the maximum extent possible, taking into account site conditions such as slope, soil type and erodibility, and vegetative cover.
 - (2) Best Management Practices (BMPs) are in place sufficient to remove or neutralize those pollutants that present a potential impact to the water body. The use or creation of retention or holding-ponds is not allowed for runoff control. The use of infiltration basins or detention ponds is encouraged. A post-construction maintenance schedule must be provided with the building permit application.
 - (3) Grading and removal of vegetation at a development site has erosion and sedimentation control measures in place, properly installed and maintained to provide maximum pollutant reduction.
 - (4) Activities involved in potential contamination within the Watershed Overlay District must submit to the Zoning Board a Spill Prevention Control and Countermeasures Plan (SPCC Plan) as part of the application for a variance or special exception. This plan shall include the following elements:
 - (a) Disclosure statements describing the types, quantities and storage locations of all contaminants that will be part of the proposed project
 - (b) Contaminant handling and spill prevention techniques
 - (c) Spill reporting procedures, including a list of affected agencies to be contacted in the event of a spill
 - (d) Spill recovery plans, including a list of available equipment
 - (e) Spill clean-up and disposal plans
- d. Existing land uses located within the Watershed Overlay District and identified as contaminating activities by the Board of Selectmen or its agent shall comply with the requirements of Section XX.8c(4) listed above.

XX.9 Hydrologic Study

- a. A hydrologic study shall be performed, where required by XX8.a, by a registered professional engineer or hydrologist, and it shall include, at a minimum, the following information:
 - (1) Description of the proposed project including location and extent of impervious surfaces; on-site processes or storage of materials; the anticipated use of the land and buildings; description of the site including topographic, hydrologic, and vegetative features.
 - (2) Characteristics of natural runoff, both on the site and projected runoff with the proposed project including their rate and chemical properties, deemed necessary by the registered professional engineer or hydrologist to make an adequate assessment of water quality.

- (3) Measures proposed to be employed to reduce the rate of runoff and pollutant loading of runoff from the project area, both during construction and once construction activities have ceased and all soils have stabilized.
 - (4) Proposed runoff control and watershed protection measures for the site. These measures shall be designed with the goal of ensuring that the rate of surface water runoff from the site does not exceed pre-development conditions and that the quality of such runoff will not be less than pre-development conditions. Special emphasis shall be placed on the impacts of proposed encroachments into the required buffer. Developers should design all proposed developments utilizing Low-Impact Development (LID) standards (see definition) in order to reduce the flow of water runoff to surface waters.
 - (5) Where the developer of property subject to the terms of this Watershed Overlay District seeks to utilize existing or planned off-site storm-water quality management facilities, the developer shall provide a written certification that the owner of the off-site facilities will accept the runoff and be responsible for its adequate treatment and that the arrangement will be recorded with the registry of deeds to run with the land in a manner that will be acceptable to the Planning Board. In the case of a homeowners' association road or a common property, provisions should be made available for this water to be treated before it reaches town or state roadways.
- b. The study will make use of existing water quality historical data (e.g. available from New Hampshire Department of Environmental Services) to the maximum extent possible. If new data are to be introduced, the Town reserves the right to have the data reviewed by an independent expert at the expense of the property developer.
 - c. The study shall be submitted to the Planning Board for review and approval concurrent with the submission of applications for review and approval of site or subdivision plans or applications for land disturbing or erosion and sediment control permits.

XX.10 Buffer Requirements For New Developments

- a. A 100 foot wide buffer zone shall be maintained along the edge of any stream discharging into Town of Sutton public water bodies and along the edge of any associated wetlands. The required setback distance shall be measured from the mean high water mark of such tributary stream and from the delineated edge of a wetland. The buffer zone shall be maintained in its natural state to the maximum extent possible.
- b. Any reduction in the required buffer zone width may be granted by the Planning Board upon presentation of a hydrologic or other study that provides documentation and justification deemed acceptable by the Planning Board. This documentation shall show that even with the reduction, the same or a greater degree of water quality protection would be afforded as would be with the full-width buffer zone. In granting such a reduction, the Planning Board may require certain conditions of approval which may include, but are not necessarily limited to, restrictions on use or type of construction, and/or additional erosion, runoff or sedimentation control measures, as deemed necessary to protect water quality.
- c. All development shall be located outside of the required buffer zone except access roadways and driveways that shall be first approved by the Planning Board followed by approval by the New Hampshire Department of Environmental Services.

- d. The following uses shall not be permitted within the buffer zone or within twenty-five feet (25') of the required buffer zone:
- (1) feed lots or other livestock impoundments;
 - (2) trash containers and dumpsters which are not under roof or which are located such that leachate from the receptacle could escape unfiltered and untreated;
 - (3) fuel storage in excess of fifty (50) gallons [200L];
 - (4) sanitary landfills;
 - (5) activities involving the manufacture, bulk storage or any type of distribution of petroleum, chemical, asphalt products(as defined in the Hazardous Materials Spills Emergency Handbook, American Waterworks Association, 1975, as revised) or any materials hazardous to water bodies or wetlands including specifically the following general classes of materials:
 - (a) oil and oil products
 - (b) radioactive materials
 - (c) any material transported in large commercial quantities that is a very soluble acid or base, highly biodegradable, or which can create a severe oxygen demand
 - (d) biologically accumulative poisons
 - (e) the active ingredients of poisons that are or were ever registered in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 USC 135 et seq.)
 - (f) substances lethal to mammalian or aquatic life
 - (g) road salt storage
 - (h) manure storage
 - (i) gravel storage

XX.11 Septic Systems

- a. For any new construction, no Individual Sewage Disposal System [ISDS] shall be installed any closer than 100 feet to any public waterbody or associated wetlands area.
- b. For any expansion of an existing structure, or the seasonal conversion of an existing structure, the owner shall conform to RSA 485-A: 38 and the associated Code of Administrative Rules for Subdivision and ISDS Design Rules, as amended.

XX.12 Site Construction (Commercial / Industrial or Residential)

- a. The impervious area of any single building lot is limited to 30% of the buildable portion of the lot. Impervious area includes building area, driveway and parking area.
- b. For any use that will render impervious more than 20% or more than 2,500 square feet of any lot, whichever is greater, a storm water management and erosion control plan, consistent with Storm Water Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, Rockingham County Conservation District, August 1992, as amended, shall be prepared and submitted with the building permit application.

XX.13 Commercial Agriculture Activities

- a. Livestock are not allowed direct access to public water bodies, streams that flow into public water bodies or associated wetlands. Drinking water for livestock shall be provided by the use of a tub or other container located a minimum of 150 feet away from public water bodies, streams that flow into public water bodies or associated wetlands.
- b. Application of fertilizers or pesticides is not allowed within 200 feet from public water bodies, streams that flow into public water bodies or associated wetlands.
- c. All livestock grazing and feeding areas shall be a minimum of 200 feet away from public water bodies, streams that flow into public water bodies or associated wetlands.
- d. All runoff from livestock feeding areas shall be directed away from public water bodies, streams that flow into public water bodies or associated wetlands.
- e. No spreading of animal manure on fields or pastures is allowed any closer than 200 feet away from public water bodies, streams that flow into public water bodies or associated wetlands. No stockpiling of manure is allowed any closer than 200 feet from public water bodies, streams that flow into public water bodies or associated wetlands, and the stockpiling must be placed on an impervious surface and contained, to prevent the release of leachate.
- f. Unless stricter setbacks or operational requirements are outlined above, all agricultural operations shall be conducted in accordance with the Manual of Best Management Practices for Agriculture in New Hampshire, NH Dept. of Agriculture, June 1993, as amended, and in accordance with all appropriate sections of the Comprehensive Shoreland Protection Act, as amended.

XX.14 Commercial Forestry Activities

- a. An undisturbed natural vegetated buffer shall be maintained within 40 feet of the mean high water mark of public water bodies or associated wetlands.
- b. Unless stricter setbacks or operational requirements are outlined above, all forestry operations shall be conducted in accordance with the Best Management Practices for Erosion Controls on Timber Harvesting Operations in New Hampshire, NH Division of Forests and Lands, February 2000, as amended, and in accordance with all appropriate sections of the Comprehensive Shoreland Protection Act, as amended.

XX.15 Exceptions

- a. If the property owner or his/her designee can document that property which is shown to be inside the Sutton Watershed Overlay District is, in fact, entirely outside the watershed, and said documentation is accepted by the Planning Board and Zoning Board, then the provisions of this ordinance shall not apply.