

# Town of Deering, New Hampshire



## Zoning Ordinance

Through Town Meeting 2017

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## **ARTICLE 1<sup>1</sup>: STATEMENT OF PURPOSE**

In accordance with the authority granted pursuant to N.H. R.S.A. 674:16, et seq., this ordinance is enacted for the purpose of promoting the health, safety, and the general welfare of the inhabitants of the Town of Deering, considering its rural character and scenic beauty and its suitability for residential and agricultural uses, and to:

1. To encourage the most appropriate use of land throughout the Town of Deering;
2. To conserve value of buildings;
3. To lessen congestion in the streets;
4. To secure safety from fires, panic and other dangers;
5. To promote health and the general welfare;
6. To provide adequate light and air;
7. To prevent the overcrowding of land;
8. To avoid undue concentration of population;
9. To facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care;
10. To assure proper use of natural resources and other public requirements; ~~and~~
11. To encourage the preservation of agricultural lands and buildings; and
12. To encourage the installation and use of solar, wind, or other renewable energy systems.

(Amended March 12, 2002; March 11, 2003)

## **ARTICLE 2<sup>2</sup>: DEFINITIONS**

**Accessory Structure:** A structure other than the primary structure on the same lot which is customarily incidental or subordinate to the primary use. (Adopted March 13, 2001)

**Active and Substantial Development or Building:** The construction of and/or installation of basic infrastructure to support development (including all of the following: roadways; pedestrian access ways, parking lots, etc. to a minimum of gravel base; and utilities ready for connection to proposed buildings/structures) in accordance with approved plans; the construction and completion of drainage improvements to service the development (including all of the following: detention/retention basins, treatment swales, pipes, underdrains, catch basins, etc.) in accordance with approved plans, completion of drainage improvements means that these facilities shall be fully operational; and the installation and maintenance of all erosion control measures (as specified on approved plans); and any other items specifically included as conditions of approval by the board.

The movement of earth, excavation, or logging of a site without completion of the items above shall not be considered "active and substantial development". Plans approved in phases shall meet these criteria for the phase currently being developed.

**Agriculture:** All operations of a farm as defined in NH RSA 21:34A.

**Acre:** Land area equaling 43,560 square feet.

**Airport:** Within the context of Article 3, Section 4, any area of land or water, whether constructed or not, which has been approved by the director as a site for the landing and taking off of aircraft or utilized or to be utilized by the public as a point of arrival or departure by air.

**Airport Hazard:** Within the context of Article 3, Section 4, any structure, tree, smoke, steam, dust or other substance which obstructs the aerial approaches of a publicly owned airport or impairs the reasonable visibility in the vicinity thereof, electrical impulses and disturbances which interfere with radio aids or communications and lights which might result in glare in the vision of pilots of aircraft or be confused with airport lights.

**Alternative tower structure:** Within the context of Article 5, Section 4, includes innovative siting techniques such as artificial trees, steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of antennae or towers.

**Antenna:** Within the context of Article 5, Section 4, means any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

**Approach Zone:** Within the context of Article 3, Section 4, an area having dimensions of 500 feet in width at a point 200 feet from the end of the landing strip and 2,500 feet in width as a distance of 10,200 feet. The center line of this area shall coincide with the center line of the landing strip extended.

**Aquifer:** For the purpose of Article 4, Section 2, means a geologic formation, group of formations, or part of a formation that is capable of yielding sustainable quantities of groundwater usable for municipal or private water supplies.

**Best Management Practices:** Within the context of Article 4, Section 5, is defined in "Innovative Stormwater Treatment Technologies, Best Management Practices Manual-May 2002" and "Best Management Practices to Control NonPoint 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.

**Boat slip:** Within the context of Article 4, Section 4, means an area of water 20 feet long, 6 feet wide and at least 2 feet deep as measured at normal high water, and located adjacent to a structure to which a watercraft may be secured.

**Buffer Zone:** Within the context of Article 4, Section 5, is the undisturbed natural area sufficient in size to mitigate runoff effects harmful to water quality.

**Buildable area:** Within the context of Article 6, is the area of a site that does not include slopes of 25% or more, submerged areas, utility right-of-ways, land set aside for open space or conservation purposes, wetlands and their buffers.

**Commercial Junkyard:** Any junkyard which is operated for profit, whether said profit is derived from the storage, reconditioning, conversion, or sale of junk, or otherwise. (Adopted March 13, 2001)

**Contamination:** Within the context of Article 4, Section 5, includes sedimentation, point and non-point source pollution, septage, or the discharge of hazardous materials.

**Conventional Subdivision:** A subdivision design plan prepared by an applicant that divides of land in the standard form of individual building lots and rights-of-ways in compliance with the Zoning Ordinance, Subdivision Regulations, and other regulations. A **feasible** conventional subdivision yields an acceptable number of lots in compliance with the density and other requirements of the Zoning Ordinance, Subdivision Regulations, and other regulations.

**Deering Lake Watershed:** The entire area that drains into Deering Lake, the boundary of which is delineated on the Official Town of Deering Tax Map.

**Development:** Includes any construction, change in use, external repair, land disturbing activity, grading, road building, pipe laying, or other activity resulting in a change in the physical character of any parcel of land.

**Development Agreement:** An agreement between the Board and a developer in compliance with this Ordinance and any other applicable town regulations. It shall include, at a minimum, the duration of the agreement; the permitted uses of the property; the density or intensity of use; the maximum height and size of proposed buildings; surety requirements and penalties for violations in terms of the agreement; completion dates for appropriate provisions; a specification of the threshold levels of work that shall constitute the terms **active and substantial development or building** and **substantial completion of the improvements shown on the subdivision plat or site plan**; inspection procedures to assure compliance with the Agreement;

and provisions for reservation or dedication of land for public purposes.

**Disturbed area:** An area in which natural vegetation is altered, removed, or otherwise damaged, exposing the underlying soil.

**Dwelling:** A building or structure used in whole or in part for human habitation.

**Dwelling Unit:** A room or group of rooms located within a dwelling and forming a single, habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating.

**Frontage:** That portion of a lot bordering on a highway, street or right-of-way.

**Ground cover:** Any plant which normally grows to a mature height of 4 feet or less.

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

**Groundwater:** Within the context of Article 4, Section 2, is the water below the land surface in the zone of saturation or in rock fractures capable of yielding water to a well.

**Hazardous Materials:** Within the context of Article 4, Section 5, are as defined in Superfund Amendment and Reauthorization Act of 1986 and Identification and Listing of Hazardous Wastes, 40 C.F.R. §261 (1987).

**Height:** The vertical distance measured from the lowest point of the finished grade surrounding a structure to the highest point of the structure, excluding chimneys and other utilitarian projections. Within the context of Article 5, Section 4, height includes antennae. (Moved from section previously numbered 2.5 in 2008)

**Home Business:** A non-agricultural commercial activity that is conducted by the occupants of a dwelling on the same lot where they reside. (Adopted March 12, 2002)



**Hydrogeologist:** Within the context of Article 4, Section 2, is a professional engineer specializing in hydrology acceptable to the planning board.

**Hydrology:** Within the context of Article 4, Section 5, is the study of the earth's waters, their distribution and the cycle involving precipitation, infiltration into the soil and evaporation.

**Impervious surface:** Any modified surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways unless designed to effectively absorb or infiltrate water.

**Impervious to Groundwater Infiltration:** Within the context of Article 4, Section 2, is the addition of pavement, cement or other ground cover which prevents water from flowing through to subsoil layers.

**Infiltration rate:** Within the context of Article 4, Section 5, is the amount and measure of time for surface water to filter into the soil.

**Internally illuminated sign:** A sign that is lighted by a source concealed behind a translucent sign panel.

**Junk:** Old or scrap metal, rope, rags, batteries, paper, rubber debris, trash, rubbish, waste or other scrap ferrous or nonferrous material; two (2) or more unregistered motor vehicles which are no longer intended or in condition for legal use on the public highways; used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or second-hand material which has been a part, or intended to be a part, of any motor vehicle, the sum of which parts or material shall be equal in bulk to two (2) or more motor vehicles; any old or scrap machinery, metal or other worn out, cast off, or discarded articles or materials ready for destruction or collected or stored for salvage or conversion to some use. Any article or material which unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new, shall not be considered junk. (Adopted March 13, 2001)

**Junkyard:** Any space more than 200 square feet in area, whether inside or outside a building, used for storage, keeping,

processing, salvaging or abandonment of junk. (Adopted March 13, 2001)

**Leachable Wastes:** Within the context of Article 4, Section 2, are waste materials, including solid wastes, sludge and agricultural wastes that are capable of releasing contaminants to the surrounding environment.

**Lot:** A parcel of land at least sufficient in size to meet the minimum requirements for use, coverage and area, and to provide required yards and other open spaces. An undersized lot is permissible if it passes state standards for soil conditions and substantially meets the requirements here and if in existence on the date of adoption of this ordinance.

**Lot of record:** A parcel, the plat or description of which has been recorded at the Hillsborough County Registry of Deeds.

**Manufactured Housing:** Any structure that only complies with "HUD" codes but does not comply with IRC or National Building Codes and that is transportable in one or more sections, which, as defined in NH RSA 674:31, 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 designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical systems contained therein.

**Marina:** Within the context of Article 4, Section 4, means a commercial waterfront facility whose principal use is the provision of publicly available services such as the securing, launching, storing, fueling, servicing and repairing of watercraft.

**Mining of Land:** Within the context of Article 4, Section 2, is the removal of geologic materials such as topsoil, sand and gravel, metallic ores, or bedrock to be crushed or used as building stone.

**Monopole:** Within the context of Article 5, Section 4, means a type of mount that is self-supporting with a single shaft of wood, steel or concrete, or other material, that is designed for the placement of antennae and arrays along the shaft.

**Natural woodland buffer:** A forested area consisting of various species of trees, saplings, shrubs and ground covers in any combination and at any stage of growth.

**Non-conforming:** Any condition or use of land, building or premise which is not permitted by the provisions of this ordinance or any amendment thereto, as of the effective date of such regulations.

**Non-Municipal Well:** Within the context of Article 4, Section 2, is any well not owned and operated by the Town of Deering or its agent.

**Non-point Source Pollution:** Within the context of Article 4, Section 5, consists of contaminants including, but 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.

**Open Space:** Within the context of Article 6, is a portion of a development site that is permanently set aside for public or private uses and shall never be developed. Open space will be preserved as natural open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; rivers, streams, banks of rivers and streams, watershed lands, trail systems, forest lands and agricultural lands.

**Ordinary high water mark:** Within the context of Article 4, Section 4, means the line on the shore, running parallel to the main stem of the river, established by the fluctuations of the water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter or debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernible, the ordinary high water mark may be determined by DES.

**Overlay District:** A special zoning district superimposed over conventional districts already in place, modifying or increasing the requirements in the underlying district. The limits of an overlay district may not coincide with parcel lines or district lines and may be related to a natural resource.

**Permanent Building:** Any building resting upon a foundation or otherwise legally defined as “real estate”.

**Permanent Resident:** An individual or family using any building continuously as a residence for a period of 6 months or more.

**Person:** Within the context of Article 3, Section 4, is any individual, firm, co-partnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

**Person:** Within the context of Article 4, Section 4, means a corporation, company, association, society, firm, partnership or joint stock company, as well as an individual, a state, and any political subdivision of a state or any agency or instrumentality thereof.

**Potential Contaminating Activity:** Within the context of Article 4, Section 5, are activities that have the potential to create a new discharge of contaminants or to increase the discharge of contaminants to surface or ground-waters.

**Pre-existing towers and antennae:** Within the context of Article 5, Section 4, means any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance or in accordance with this ordinance, as well as the replacement for any such tower or antenna.

**Proposed service area:** Within the context of Article 5, Section 4, means the transmission and reception area of the proposed transceiver (transmitter/receiver).

**Protected shoreland:** Within the context of Article 4, Section 4, means for natural fresh water bodies without artificial impoundments, for artificially impounded fresh water bodies and for rivers, all land located within 250 feet of the reference line of protected surface waters.

**Rear lot line:** Within the context of Article 4, Section 4, means, for purposes of determining setback requirements for a property having shoreline frontage, any property boundary line separating

that property from others which do not have adjacent shoreline frontage.

**Recharge Area:** A natural or man-made area conducive to, or constructed for the purpose of, collection, retention and infiltration of precipitation, surface run-off, and/or melt-waters, thereby contributing to the health and maintenance of groundwater resources.

**Reference line:** Within the context of Article 4, Section 4, means: (1) For natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by the Department; (2) For artificially impounded fresh water bodies with established flowage rights, the limit of flowage rights, and for water bodies without flowage rights, the waterline at full pond as determined by the elevation of the spillway crest; (3) For rivers, the ordinary high water mark.

**Removal or removed:** Cut, sawed, pruned, girdled, felled, pushed over, buried, burned, killed, or otherwise destructively altered.

**Residential unit:** Within the context of Article 4, Section 4, means a structure, or portion thereof, providing complete and independent living facilities, including permanent facilities for living, sleeping, eating, cooking, and sanitation which are used in common by one or more persons.

**Right-of-way:** A strip of land that is generally used for the location of a vehicular carriageway, walkway, other accessway, or utilities.

**Right-of-way:** Within the context of Article 4, Section 4, means, for the purpose of determining setbacks within the Shoreland Protection District, any Town road or commonly used private road or track providing vehicular access to two or more properties. (Amended March 13, 2001)

**Runoff Volume:** Within the context of Article 4, Section 4, is the measure of surface water runoff during a storm event.

**Sapling:** Any woody plant which normally grows to a mature height greater than 20 feet and has a diameter less than 6 inches at a point 4-1/2 feet above the ground.

**Sedimentation:** Within the context of Article 4, Section 5, means the deposition of sand, silt, soil or other matter into a watercourse or wetland, including that resulting from post-development surface runoff.

**Setback:** The distance between the nearest portion of a building and a lot or right-of-way line, whichever is closer.

**Shoreline frontage:** Within the context of Article 4, Section 4, means the average of the actual natural navigable shoreline footage and a straight line drawn between property lines, both of which are measured at the reference line.

**Shrub:** Any multi-stemmed woody plant which normally grows to a mature height of less than 20 feet.

**Side lot line:** Within the context of Article 4, Section 4, means, for the purpose of determining setbacks within the Shoreland Protection District, any property boundary line separating two properties having adjacent shoreline frontage.

**Sludge:** Within the context of Article 4, Section 2, is residual materials produced by the sewage treatment process.

**Solid Waste:** Within the context of Article 4, Section 2, is any discarded or abandoned material including refuse, putrescible material, septage, or sludge, as defined by New Hampshire Solid Waste Rules Env-Wm 101-300 & 2100 - 3700. Solid waste includes solid, liquid, semi-solid, or contained gaseous waste material resulting from residential, industrial, commercial, mining and agricultural operations and from community activities. (Amended March 11, 2003)

**Special Exception:** A special allowance granted under specific authority of the local ordinance when conditions stated in the ordinance are found to exist which permit a use of land or buildings in a manner that is otherwise prohibited. (Amended March 14, 1989)

**Storm event:** Within the context of Article 4, Section 5, is a period of sustained rainfall with a minimum total accumulation of 0.25 inches of precipitation over a 24 hour period.

**Storm water:** Within the context of Article 4, Section 5, is surface water runoff from a non point source caused by a storm event.

**Structure:** Within the context of Article 3, Section 4, is any object constructed or installed by man, including such objects although regulated or licensed by other provisions of law.

**Structure:** Unless otherwise defined, is anything built for the support, shelter or enclosure of persons, animals, goods, or property of any kind, as well as anything constructed or erected with a fixed location on or in the ground, exclusive of boundary walls or fences. (Adopted March 13, 2001 and amended xx, 2007)

**Structure:** Within the context of Article 4, Section 4, means anything constructed or erected, except a boundary wall or fence, the use of which requires location on the ground or attachment to something on the ground.

**Substantial Completion:** The execution, implementation, or construction of all on-site and off-site improvements in compliance with the decision of a board, except for those improvements which are specifically deferred by the board, prior to expiration of the four year period as specified in NH RSA 674:39.

**Substantial Improvement:** Except in the context of Article 4, section 3, any work done to a structure or the land that increases the pre-improvement value by 50% or more.

**Subdivision:** As defined in RSA 672:14.

**Telecommunication facility:** Within the context of Article 5, Section 4, means any structure, tower, antenna or other exterior apparatus providing telephonic, radio, television, personal communications service (PCS), pager network, or any other communications service through the sending and/or receiving of electromagnetic waves of any bandwidth.

**Tower:** Within the context of Article 5, Section 4, means a structure designed and constructed primarily for the purpose of supporting one or more antennae or other device, including but not limited to self-supporting lattice towers, guy towers and monopole towers. The term includes radio and television

transmission towers, cellular telephone towers, microwave towers, common carrier towers, alternative tower structures and the like.

**Toxic or Hazardous Material:** Within the context of Article 4, Section 2, means any substance or mixture of such physical, chemical or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this Town. Toxic or hazardous materials include, without limitation: volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalies, and include products such as pesticides, herbicides, solvents and thinners, and such other substances as defined in Groundwater Management and Groundwater Release Detection Permits, Env-Wm 1403.05.

**Tree:** Any woody plant which normally grows to a mature height greater than 20 feet and which has a diameter of 6 inches or more at a point 4-1/2 feet above the ground.

**Tributary stream:** Any perennial or intermittent stream, flowing either directly or indirectly into Deering Lake or any other surface water or wetland.

**Variance:** A relaxation of the strict interpretation of any provision of the ordinance granted by the Board of Adjustment upon appeal.

**Viewshed:** Determined following a public hearing, physiographic area composed of land, water, biotic, and cultural elements which may be viewed from one or more viewpoints and which is perceived to have inherent scenic qualities and/or aesthetic values as determined by those who view it.

**Water dependent structure:** Within the context of Article 4, Section 4, means a dock, wharf, pier, breakwater, or other similar structure or any part thereof, built over, on or in the waters of the State.

**Watershed:** Within the context of Article 4, Section 5, is the area lying within the drainage basins of Deering Lake.



**Wetlands:** As defined in Article 3, Section 5.2 of Town of Deering Zoning Ordinance including all surface waters.

**Yard, Front:** An open space extending across the full width of the lot and lying between the front lot line and the nearest point of the building.

**Yard, Rear:** An open space between the rear-most main building on the lot and the rear lot line, extending across the full width of the lot.

**Yard, Side:** An open space along the side line of a lot, extending from the front yard line to the rear yard line; in the case of a corner lot, the side street yard extends to the rear lot line.  
(Amended March 8, 2005)

**Yield Plan:** Within the context of Article 6, is a plan submitted by the applicant showing a feasible conventional subdivision under the requirements of the specific zoning district in which the property is located and the requirements of any and all State and local subdivision regulations.

## **ARTICLE 3: THE USE OF LAND**

### **ARTICLE 3, SECTION 1 General Provisions<sup>3</sup>**

**3.1.1** For the purposes of regulating the use of land and the location and construction of buildings, the Town of Deering is adopting the provisions of this zoning ordinance and it shall be considered as one district with the following regulations and restrictions.

**3.1.2** It shall be a district of agricultural/residential use only. Business, commercial and industrial uses are prohibited in this district except as hereinafter provided.

**3.1.3** The planning board is authorized to conduct preliminary review of site plans and to review and approve or disapprove site plans for the development or change or expansion of use of tracts for nonresidential uses or for multi-family dwelling units, which are defined as any structures containing more than 2 dwelling units, whether or not such development includes a subdivision or resubdivision of the site.  
(Adopted by resolution of Town Meeting, March 9, 2005)

**3.1.4** In the event of a conflict between the requirements of different sections of this Ordinance or between this Ordinance, state statute and regulations, and federal statutes and regulations, the more stringent shall apply.

## **ARTICLE 3, SECTION 2      Agricultural Use<sup>4</sup>**

**3.2.1** Agricultural use shall mean land used for agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, silviculture and animal and poultry husbandry including the display of home agricultural products and produce for purpose of sale. Any such uses are permitted except as restricted below. (Amended March 12, 2002)

**3.2.2 Animal Feedlots**, which are commercial agricultural establishments where a concentration of animals are confined and fed simultaneously, are permitted only where acceptable animal waste management practices are exercised in accordance with the U.S. Soil Conservation Service publication "Animal Waste Management". All animal husbandry activities, whether an animal feedlot or not, shall utilize best management practices for animal wastes as laid out in the USSCS "Animal Waste Management" guide.

**3.2.3** The slaughtering of animals or poultry other than for use by the owner or occupant shall be considered a commercial venture and shall be permitted only as a special exception and subject to the following regulations:

- a) A lot shall be eight acres or more in area.
- b) Each lot shall have at least 500 feet in frontage if adjacent to a right-of-way.
- c) A building for these purposes shall be placed at least 100 feet from any right-of-way.
- d) A building for these purposes shall be located at least 200 feet from side or rear lines.

**3.2.4** No commercial use, as described in the preceding paragraphs, shall be approved if the Board finds that it will cause a hazard to health, property values, or safety through fire, traffic, unsanitary conditions or through excessive noise, vibration, odor or other nuisance feature. (Amended March 12, 2002)

### **ARTICLE 3, SECTION 3      Commercial Uses**

**3.3.1** Hotels, motels, tourist homes, private schools, nursing homes, and long term medical care facilities may be allowed by special exception, provided that there be adequate traffic and off-street parking provisions, that health standards be maintained, and that there be no detriment to the neighborhood.

**3.3.2** All other non-agricultural business, commercial or industrial ventures may be allowed by special exception, provided that the following regulations and restrictions shall be observed:

- a) No business, commercial or industrial venture or use shall be permitted which would cause any undue hazard to health, safety or property values or which is offensive to the public because of noise, vibration, excessive traffic, unsanitary conditions, noxious odor, smoke or other similar reason.
- b) In the case of new construction, including contemplated construction and construction commenced less than three full years prior to the date of the application for a special exception, sufficient acreage shall be included to allow the following setbacks:
  - In the front, not less than 75 feet from a right-of-way to any building or parking lot having both an exit and an entrance and with grass or beautification in the buffer area.
  - Side and rear: Not less than 50 feet from a building or parking lot to the lot line. (Amended March 13, 2001)
- c) Sufficient off-street parking to allow 300 square feet for each three anticipated patrons or employees on premises at the same time. In the case of service establishments, one car shall be deemed to contain four patrons. (Amended March 13, 2001)
- d) Upon an affirmative vote of 75% of the members present, parking for the delivery and removal of inventory or refuse may be required. Parking reserved for these purposes may not be used to offset the requirements of paragraph 3.3.2 c). (Adopted March 8, 1988)
- e) On-premise advertising signs in connection with businesses receiving approval shall comply with the provisions of Article 7.

- f) No commercial exception involving the storage, display or sales of food items to the public shall be allowed unless facilities, within the building where the commercial exception shall take place, are provided for the sanitary maintenance of the facility. Such facilities shall at a minimum include hot and cold running water and sewerage or septic service. (Adopted March 8, 1988)
- g) Mining, excavation, processing, or removal of soil, rock, sand or gravel or similar material shall be regulated as follows:
- New operations shall require a special exception from the Board of Adjustment subject to site plan approval by the Planning Board. For the purposes of this paragraph, "new" shall mean projects, except those operations exempt under RSA 155-E:2 or RSA 155-E:2-a, commenced after the effective date of this amendment and projects on existing excavation sites on which no excavation has been done since August 24, 1977.
  - All operations except those exempt under RSA 155-E:2-a shall be regulated by the Planning Board.
  - Enforcement of these regulations, including revocation of permits upon the advice of the Planning Board, shall be by the Board of Selectmen under the authorities invested in that Board by Section 5.1.3. (Amended March 13, 2001)

**3.3.3 Junkyards** -- In addition to the special exception requirements set forth in this section, operation of junkyards shall be regulated in accordance with the following:

- a) Commercial Junkyards lawfully existing on the effective date of this provision may, upon application therefore, be licensed by the Board of Selectmen; provided, that such license shall be subject to the following conditions:
- i. No junk shall be maintained within 30 feet of any right-of-way.
  - ii. No material shall be placed or stored within the required front, side or rear setbacks for buildings or other structures on a lot. All yard setback areas shall at all times be clean, vacant and well maintained.
  - iii. The area occupied by junk at any time shall not exceed by more than 10% the area occupied by junk on the date of initial or renewed licensing by the Board of Selectmen.
  - iv. The storage of material shall not exceed ten (10) feet in height.

- v. Any junk maintained on any lot shall be substantially screened from any right-of-way and from abutting premises and reasonably secured from unauthorized entry.
  - vi. No material shall be placed in such a manner that it is capable of being transferred off the premises by wind, water or other natural causes.
  - vii. All paper, cloth, rags and other fibers, and activities involving the same, shall be within fully enclosed buildings.
  - viii. All junkyards shall be maintained in such a manner as to prevent:
    - ix. Any menace to public health and safety, including the breeding, harboring or infecting of rats and other rodents, vermin insects and the accumulation of stagnant water;
    - x. Violation of any health or sanitary law, ordinance or regulation of the Town of Deering or the State of New Hampshire;
    - xi. Offensive or obnoxious sounds or odors; and
    - xii. Any other public or private nuisance.
  - xiii. No oil, grease, gasoline, tires or similar material shall be burned at any time, and all other burning shall be done in suitable containers and shall be attended and controlled at all times.
  - xiv. Provision is made for monitoring wells of surface or subsurface groundwater at suitable locations for the purpose of testing for contamination by hazardous and toxic substances.
  - xv. The Town is authorized to enter upon the junkyard site with proper notification for the purpose of obtaining surface and subsurface groundwater samples and inspecting the premises for compliance with the other requirements of this section.
- b) Junkyards not legally operating on the effective date of this provision may be licensed by the Board of Selectmen after having first received a recommendation from the Planning Board and the Conservation Commission, and provided that they meet all of the conditions set forth in the subparagraph above, except that subparagraph iii. above shall not apply to initial licensing.
- i. A period of six (6) months from the date of adoption of this provision shall be provided for junk existing on said date either to be removed or to be brought into compliance with the requirements hereof.
  - ii. Pursuant to RSA 236:121, junkyard licenses shall expire on March 31st of each year. Junkyard licenses shall be renewed

thereafter upon payment of an annual license fee to the Town of Deering in the amount of Twenty-Five Dollars (\$25.00) pursuant to RSA 236:122. Junkyard licenses shall be renewed without a hearing if all provisions of this ordinance and RSA 236:111, et seq. have been complied with during the license period. At the discretion of the Board of Selectmen, appropriate investigations of each licensee may be conducted prior to the issuance of a renewed junkyard license including, but not limited to, the testing of surface and subsurface waters for contamination by hazardous or toxic substances. (Amended March 11, 2003)

- iii. To the extent that any provision under this section conflicts with any provision of any other applicable law, ordinance or regulation, the provision which imposes the greater restriction or the higher standard shall be controlling. (Adopted March 13, 2001)

**3.3.4** No junk other than junk located in a commercial junkyard licensed in accordance with Section 3.3.3 shall be placed or maintained except in accordance with the following conditions:

- a) The aggregate area of any lot occupied by junk shall not exceed 200 square feet.
- b) No junk shall be located within 150 feet of any right-of-way or within 150 feet of any dwelling on abutting property.
- c) Any junk shall be substantially screened from any right-of-way and from abutting premises. (Adopted March 13, 2001) (Amended March 9, 2005)

**3.3.5 Home Businesses<sup>5</sup>** -- are permitted in all districts, provided that the following conditions are met.

- a) No goods, stock in trade, or other commodities may be visible from outside the building with the exception of agricultural products or produce permitted by the provisions of Section 3.2;
- b) There are no on-premise retail sales of goods or merchandise, with the exception of sales made via mail order or via telecommunication, or sales of agricultural products or produce permitted by the provisions of Section 3.2;
- c) The home business shall not employ more than two (2) persons who are not residents on the premises;
- d) External advertising is limited to one small sign not exceeding one square foot in area attached to a mailbox for the facilitation of mail;
- e) The use shall not create excessive traffic, noise, fumes, odor, dust, vibration, heat, glare, electrical interference or a health or safety hazard;
- f) Off-street parking sufficient to accommodate the occupants, employees and visitors shall be provided; and
- g) There is no exterior evidence of business use which differentiates the appearance of the property from that of other dwellings used exclusively as residences.

(Adopted March 12, 2002)



**ARTICLE 3, SECTION 4      Airport Zoning<sup>6</sup>** (Adopted March 14, 2006)

**3.4.1 Authority and Purpose**

In pursuance of the authority conferred by Chapter 424, of the Revised Laws and for the purpose of promoting the health, safety and general welfare of the inhabitants of Deering, New Hampshire, by preventing the creation or establishment of airport hazards, thereby protecting the lives and property of users of the Hawthorne-Feather airport and of occupants of land in its vicinity and preventing destruction or impairment of the utility of the Airport and the public investment therein the following regulations are hereby adopted. Nothing herein shall be construed to supplant, or otherwise relieve any property owner from complying with, any other provision of this Zoning Ordinance.

**3.4.2 Zones**

In order to carry out the purposes of this amendment all of the land within the boundaries of the approach zones and all of the land within a distance of 11,000 feet from the airport runway's northing and easting center point, is hereby declared subject to the restrictions of this amendment.

**3.4.3 Height Limits**

No structure or tree shall be erected, altered or allowed to grow within the areas described in Section 3.4.2 hereof, above a slope ratio of 40 feet to one foot measured from the end of the landing strip or above a slope ratio of seven feet horizontal to one foot vertical measured from the side of the landing strips and the approaches or within a distance of 6,000 feet from the airport reference point above a height of 150 feet above the airport elevation.

**3.4.4 Use Restrictions**

Notwithstanding any other provisions of the zoning ordinance, no use may be made of the land described in Section 3.4.2 hereof in such manner as to create electrical interference with radio aids or communications between the airport and aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes to flyers using the airport, impair visibility in the vicinity of the airport by the creation and discharge of smoke, steam, dust or other obstructions to visibility or otherwise endanger the landing, taking off, or maneuvering of aircraft.

### **3.4.5 Non-Conforming Uses**

The regulations prescribed in Section 3.4.3 and 3.4.4 of this amendment shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date hereof, or otherwise interfere with the continuance of any non-conforming use. Nothing herein contained shall require any change in the construction, alteration, or intended use of any structure and construction or alteration, of which was begun prior to the effective date of this amendment, and it is diligently prosecuted and completed within two years hereof.

### **3.4.7 Future Uses**

No material change in violation of Sections 3.4.3 and 3.4.4 hereof shall be made in the use of land, and no structure or tree shall be erected, altered, planted or otherwise established in violation of Sections 3.4.3 and 3.4.4 hereof in any of the areas of land described in Section 3.4.2 hereof.

### **3.4.8 Existing Uses**

Before any existing use, structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, hereof, a permit must be secured authorizing such replacement, change or repair if it is in violation of Sections 3.4.3 and 3.4.4 hereof. No such permit shall be granted that would allow the establishment or creation of an airport hazard or permit a non-conforming use, structure or tree to be made or become higher, or become a greater hazard to air navigation, than it was on the effective date of this ordinance or than it is when the application for a permit is made. Except as indicated, all applications for a permit for replacement, change or repair of existing use, structure, or tree shall be granted.

**ARTICLE 3, SECTION 5 Wetlands<sup>7</sup>** (Adopted March 8, 1988)

**3.5.1 Purpose**

The purpose of this district is to protect the public health, safety, general welfare and property. This section for wetlands is intended:

- a) To be a guide in the use of wetlands in Deering
- b) To aid in the protection of persons and property from the danger of floods by preserving natural floodwater storage areas
- c) To control the development of structures and land use in and adjacent to wetlands to prevent the pollution of surface and groundwater by sewerage, hazardous substances or siltation
- d) To protect unique and unusual natural areas and wildlife habitats and maintain ecological balances
- e) To protect aquifers, which serve as existing or potential water supplies, and the aquifer recharge system
- f) To prevent the town from incurring the costs of constructing or extending additional central sewer and/or treatment facilities which will be necessitated by unwise development or other misuse of wetland areas
- g) To encourage those uses that can appropriately and safely be located in wetland areas
- h) To protect surface waters and wetlands contiguous to surface waters. (Amended March 11, 2003)
- i) To prevent, the destruction of natural wetlands which provide flood protection, groundwater recharge, pollution abatement, and the augmentation of stream flow during dry periods. (Adopted March 8, 2005)

**3.5.2** Wetlands as defined in the Wetland Conservation District shall be areas identified on the Town of Deering Wetlands Maps and the National Wetland Inventory Maps. Other non-surface water wetlands shall be identified in the field using wetland characteristics of hydrophytic vegetation, hydric soils and wetlands hydrology in accordance with the techniques outlined in the Corps of Engineers Wetland Delineation Manual, Technical Report 4-87-1, 1987. The hydric soils component of the wetland delineations shall be determined in accordance with the

manual Field Indicators for Identifying Hydric Soils in New England (version 2, July, 1998) published by the New England Interstate Water Pollution Control Commission. Wetlands shall be classified in accordance with U.S. Fish and Wildlife Service Manual FWS/OBS-79/31, Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al, 1979). Classifications may include, but are not limited to, the following:

- a) Scrub/Shrub and/or Forested Wetlands: are areas where the water table is at or near the ground surface for a significant part of the year. The vegetational communities consist mostly of trees and woody shrubs including, but not limited to:
- Alders Poison Sumac
  - Arrow wood Red Maple
  - Atlantic White Cedar Rhodora
  - Black Ash Sphagnum Moss
  - Black Gum Spicebush
  - Black Spruce Sweet Pepperbush
  - Buttonbush Tamarack (Larch)
  - Common Elder Willow
  - High bush Blueberry Winterberry
  - Marsh Rose
- b) Emergent Wetlands: also known as marshes, wet meadows or fens are characterized by erect rooted, herbaceous hydrophytes. Vegetation is present and the soil is saturated for most of the growing season. Flooding may be seasonal, permanent, irregular or temporal. The vegetational community includes, but is not limited to the following:
- Arums Pickerel Weeds
  - Bladderworts Rushes
  - Bur-reeds Sedges, including Bulrushes,
  - Cotton-grasses, and Wool-grasses
  - Cat-tails Smartweeds
  - Duckweeds Sweet Gale
  - Eelgrass Water-Lilies
  - Frog's-bits Water Milfoil
  - Horsetails Hydrophyllus Grasses
  - Leatherleaf
- c) Bogs: include areas where mosses cover substrates other than rock and where emergents, shrubs, or trees make up less than 30% of the area cover. The substrate is saturated to the surface. The water in a bog is practically devoid of oxygen and nutrients.

Bogs usually develop in undrained glacial depressions. Typical plants include, but are not limited to:

- Atlantic White Cedar Pale Laurel
- Black Spruce Pitcher-plants
- Bladderworts Rhodora
- Bog or Buckbean Sedges
- Bog-Laurel Sheep Laurel
- Bog-Rosemary Sphagnum Moss
- Cotton Grass Sundews
- High-bush Blueberry Sweet Gale
- Leatherleaf

(Amended March 11, 2003)

### **3.5.3 Wetlands Incorrectly Delineated:**

- a) Where it is alleged that an area has been incorrectly delineated as a wetland in Deering, or that an area not so designated meets the criteria for wetlands designation, the Planning Board shall determine whether the regulations contained herein have application.
- b) The Planning Board shall make their judgment under this paragraph only upon the determination by a certified wetland scientist licensed by the State of New Hampshire on the basis of additional on-site investigation or other suitable research that the information contained on the Town of Deering Wetlands Maps is incorrect. This evidence shall be acceptable only when presented in written format by said scientists to the Planning Board. Any necessary testing or expenses incurred to clearly delineate questionable wetlands areas shall be at the expense of the landowner or developer. (Amended March 11, 2003)
- c) In a dispute about the boundaries of a wetland area on a specific parcel of land, the Board of Selectmen or their duly authorized agent may retain the services of a certified wetland scientist to map the area in question and require the applicant to pay the cost thereof. In the event the applicant is aggrieved by the wetlands delineation by the Board of Selectmen or their duly authorized agent, the applicant may apply to the Planning Board pursuant to §3.5.3 b). (Amended March 8, 2005)

**3.5.4 Wetlands - Permitted Uses:** Permitted uses are those which will not require the erection or construction of any structures or buildings, will not alter the natural surface configuration by the addition

of fill or by dredging and uses that otherwise are permitted by the zoning ordinance. Such uses may include the following:

- a) Forestry: using best management practices as outlined in the 1996 New Hampshire Department of Resources and Economic Development "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire," by J.B. Cullen, in order to protect streams from damage and to prevent sedimentation. (Amended March 11, 2003)
- b) Agriculture: cultivation and harvesting of agricultural crops according to recognized soil conservation practices, including the protection of wetlands from pollution caused by fertilizers, pesticides and herbicides used in such cultivation – and sedimentation caused by erosion.
- c) Wildlife refuges, parks, and recreation uses consistent with the purposes and intent of this ordinance such as nature trails, and conservation areas
- d) Open spaces as permitted or required by the subdivision regulations or the zoning ordinance
- e) State approved water impoundments
- f) Construction of wells for water supply
- g) Dry hydrants and fire protection ponds
- h) Docks or wharves on surface waters as long as such use conforms to all local, state and federal regulations and all required permits have been granted.

### **3.5.5 Special Provisions:**

- a) No portion of a sub-surface waste water disposal system may be constructed or enlarged closer than seventy five (75) feet to any wetlands, however, existing leach fields may be enlarged in directions parallel to, but not closer to such wetland.
- b) (formerly c) No structure shall be located within fifty (50) feet of the delineated edge of a wetland and a natural woodland buffer,

as defined in Article 2, shall be maintained within the same area.  
(Adopted March 11, 2003)

### **3.5.6 Special Exceptions:**

- a) When an application for the following uses in the Deering Wetlands Conservation District has been referred to the Planning Board, upon notification, the Conservation Commission and the Health Officer will have at least thirty (30) days prior to a public hearing for review and comment.
- b) The Planning Board, after proper public notice and public hearing, may grant a special use permit for the following:
  - Streets, roads and other access ways;
  - Utility right-of-way easements, including power lines and pipe lines, if so located and constructed to minimize any detrimental impact of such uses upon the wetland; and
  - Water impoundments
- c) The Zoning Board of Adjustment, after proper public notice and public hearing, may grant a special exception for the undertaking of a use not otherwise permitted in the Wetlands Conservation District, if it can be shown that such proposed use is not in conflict with any and all of the purposes and intentions listed in paragraph 5.1 of this District.
- d) Such uses must comply with any and all state and federal restrictions and laws.

### **3.5.8 Prior Non-Conforming Uses.**

- a) Existing uses which are non-conforming under this section may continue subject to the requirements of Section 5.3 of this Zoning Ordinance.
- b) A non-conforming use shall not be enlarged or expanded as to further encroach on the wetland.

## **ARTICLE 4: DISTRICTS**

### **ARTICLE 4, SECTION 1 General Provisions and Dimensional Requirements<sup>8</sup>**

**4.1.1** Two apartments or dwelling units for permanent residents shall be the maximum allowable in any one given building. For purposes of new construction, the minimum acreage per each dwelling unit must be two (2) acres. (Adopted March 14, 1989)

**4.1.2** Lots shall be two acres in size, or larger, depending on soil and slope conditions as may be suitable to sustain development according to state standards and shall meet the requirements of the National Flood Insurance Program and Article 3 section 5 of this Ordinance. (Amended March 8, 1988)

**4.1.3** No area of wetland may be used in determining required acreage or density. The minimum dry land area must be contiguous and sufficient in size and configuration to adequately accommodate all required utilities such as the well and water supply and sub-surface waste water disposal system. This minimum contiguous dry land area shall be the required building site with accommodating utilities thereon. All contiguous areas shall be a minimum of 50 feet in width in order to be considered contiguous. (Amended March 14, 1989, March 12, 1996, March 11, 2003 and March 8, 2005)

**4.1.4** There shall be observed the following road frontage and setbacks in the construction of new buildings or the relocation of existing ones: (Amended March 8, 1988)

- a) Minimum distance between any building and the edge of a right-of-way shall be 50 feet.
- b) Minimum distance from a lot's sidelines to any building shall be 30 feet, provided, however, that small, detached accessory buildings may, as a special exception, be approved to within 15 feet of a lot line if the Board of Adjustment finds this would not be detrimental to the neighborhood.
- c) Minimum distance from a lot rearline to any building shall be 40 feet, provided, however, that small, detached accessory buildings may, as a special exception, be approved to within 20 feet of the lot rearline, upon a finding of no detriment to the neighborhood.



- d) Maximum height of any building shall be 35 feet with determination being the vertical distance from the lowest finished grade surrounding the building to the highest point of the roof. Silos, barns, and church towers are excepted, as are residential television and radio antennae.

**4.1.5** Minimum road frontage for any lot shall be 200 continuous feet. (Adopted March 8, 1988)

**4.1.6** No building or set of buildings shall occupy more than 30 percent of its lot, nor shall it occupy more than 60 percent of its frontage if its front yard is less than 100 feet deep.

**4.1.7** No building, residence or manufactured housing may be located anywhere in this district unless it meets all of the area, setback, road frontage, height and any other requirements for a building in this district.

- a) The provisions of this section shall not apply to campers, recreational vehicles, or travel trailers, so called, which may be parked or stored in an accessory private garage or in a rear or side yard in any district on the premises of any occupied dwelling, provided that said camper, recreational vehicle, or travel trailer is the property of a bona fide guest, or is otherwise unoccupied.
- b) Nothing in this section shall be construed to prohibit a landowner from placing a manufactured home, camper, recreational vehicle, or travel trailer on their lot and residing in such structure during the construction of a new home or to prohibit an owner and occupier of a residence which has been damaged by fire or other disaster from placing a manufactured home, camper, recreational vehicle, or travel trailer on the lot of such residence and residing in such structure while the residence is being rebuilt, provided that the landowner/ owner/occupier has acquired a permit from the Board of Selectmen to use the manufactured home, camper, recreational vehicle, or travel trailer as a temporary residence during construction. The period of such occupancy shall expire in 12 months from the placement of such structure or upon the issuance of a certificate of occupancy, whichever occurs first. (Amended March 13, 2001)

**4.1.8** Where the property is smaller than the minimum allowable lot size (2 acres), such as an island, or is too small to provide the minimum

allowable setbacks under paragraph 4.1.4 and section 4.4 of the Ordinance:

- a) A platform for a temporary structure such as a tent or screen house may be located, provided:
  - If it is in the Shoreland Protection District, it is not a structure as defined in Article 2 for Article 4, Section 4. (Amended March 12, 2002)
  - It does not contain structural members extended above the platform floor
  - It is not constructed with a fixed location on or in the ground
  
- b) When the use of the property would normally require the need for sanitation facilities, an enclosed toilet must be provided meeting the following specifications:
  - Not larger than 36"W X 48"D X 84"H in dimension
  - Containing a chemical toilet, which shall have a container capable of being sealed and removed for disposal in an approved facility
  - The facility shall be placed as far as possible from the lot lines or shore lines
  - Shall be constructed of materials, colors, textures, screening, and landscaping that will blend with the natural setting. (Adopted March 9, 1999)

**ARTICLE 4, SECTION 2 Aquifer Protection**<sup>9</sup> (Adopted March 13, 1990)

**4.2.1 Authority and Purpose** -- Pursuant to RSA 674:16-21, the Town of Deering adopts an Aquifer Protection District and accompanying regulations in order to protect, preserve, and maintain potential groundwater supplies and related groundwater recharge areas within known aquifers identified by the Town. The objectives of the Aquifer Protection District are:

- a) to protect the public health and general welfare of the citizens of Deering
- b) to prevent development and land use practices that would contaminate or reduce the recharge to the identified aquifers.
- c) to assure the availability of public and private water supplies for future growth of the Town in accordance with the Master Plan.
- d) to encourage uses that can appropriately and safely be located in the aquifer recharge areas.

**4.2.2 Administration**

- a) General: The provision of the Aquifer Protection District shall be administered by the Planning Board. All development proposals (within this District), other than single or two-family residential construction not involving the subdivision of land, shall be subject to subdivision and/or site plan review and approval in accordance with Planning Board rules and regulations and this section. Such review and approval shall precede the issuance of any building permit by the Town.
- b) Enforcement: The Board of Selectmen shall be responsible for the enforcement of the provisions and conditions of the Aquifer Protection District, pursuant to the provisions of Section 5 (Amended March 12, 2002)

**4.2.3 District Boundaries**

- a) Location: The extent of the Aquifer Protection District shall be shown on the Aquifer Protection District Map and shall be the outermost edge of the surficial extent of all aquifer deposits presently designated as stratified drift (high and medium

potential) as supported by the information derived from the USGS Water Resources Investigations Reports (WRIR) 92-4154 entitled Geohydrology and Water Quality of Stratified Drift Aquifers in the Contoocook River Basin, South-Central New Hampshire, as prepared by Philip T. Harte and William Johnson and dated 1995, and 92-4192 entitled Geohydrology and Water Quality of Stratified-Drift Aquifers in the Middle Merrimack River Basin, South-Central New Hampshire, as prepared by Joseph D. Ayotte and Kenneth W. Toppin. This map is to be used in conjunction with the tax map and/or other maps of the Town as an overlay district. (Amended March 11, 2003).

- b) Recharge Areas: The direct recharge area for the identified aquifer is considered to be co-terminus with that aquifer. The indirect recharge areas are those areas that contribute to groundwater recharge of the aquifer from outside the aquifer boundaries.
- c) When development is proposed in indirect recharge areas which are tributary to the Aquifer Protection District, such as areas including a tributary stream, or on slopes adjacent to the Aquifer Protection District, the Planning Board may hire, at the developer's expense, a qualified hydrogeologist to assess the potential impact on groundwater quality and recharge rates of the aquifer from such development.
- d) Appeals: Where the bounds of the identified aquifer or recharge area, as delineated, are in doubt or in dispute, any landowner aggrieved by such delineation may appeal the boundary location to the Planning Board. Upon receipt of such appeal, the Planning Board shall engage, at the land owner's expense and request, a qualified hydrogeologist to conduct an investigation and prepare a report determining the proper location and extent of the aquifer and recharge area relative to the property in question. This report shall include but not be limited to:
  - A detailed topographic layout of the subdivision and/or area to be developed, prepared by a registered land surveyor.
  - The aquifer boundary as shown on the Aquifer Protection District Map shall be overlaid on the plat and the newly proposed boundary location shall be indicated on the same plat by a broken line.
  - Any additional mapping, hydrogeologic reports or information which becomes available as a result of recent or on-going scientific investigation of the location and extent of aquifers,

performed by the US Geological Survey; NH State agencies or boards, or the Town of Deering or the agents of any of the above.

- e) The Planning Board may, based upon the findings of paragraph 4.2.3 d) above, adjust the boundary or area designation of the Aquifer Protection District or reduce or expand the area so designated so as to more correctly define the location and extent of the aquifer on a site-specific, case-by-case basis.
- f) The Planning Board shall reserve the right to withhold action on such plat pending the results of an on-site and/or other investigation by that Board or its appointed agent and shall act to approve or disapprove the final plat within 90 days of the acceptance of the application or such further time as deemed necessary and as provided for by NH State statute.

#### **4.2.4 Use Regulations**

- a) Minimum Lot Size. The minimum lot size within the Aquifer Protection District for each dwelling unit if a residential use, or each principal building if a non-residential use, shall be two (2) acres, or 87,120 square feet.
- b) Hydrogeologic Studies are required for Development proposals within the Aquifer Protection District performed by a qualified hydrogeologist. This study shall evaluate the development's impacts to groundwater within both the parcel to be developed and the surrounding land. The groundwater quality beyond the property lines of said site shall not be degraded by polluting substances such as nitrates, phosphates, bacteria, etc. Larger lots may be required based on the findings of said study.
- c) Hydrogeologic Studies performed by a qualified hydrogeologist are required for proposed subdivisions of four (4) lots or greater within the Aquifer Protection District. For subdivisions of three (3) lots or less the Planning Board will determine, on a case-by-case basis, the need for a hydrogeologic study. Particularly sensitive sites may include areas that have sub-surface waste water disposal systems in close proximity to wells, or may contain excessively drained soils or steep slopes.

#### **4.2.5 Prohibited Uses**

The following uses are prohibited in the Aquifer Protection District:

- a) Disposal of solid waste.
- b) Storage and disposal of hazardous waste.
- c) Disposal of liquid or leachable wastes except that from one or two-family residential subsurface disposal systems, or as otherwise permitted as a conditional use.
- d) Subsurface storage of petroleum and other refined petroleum products.
- e) Industrial uses which discharge contact type process waters on-site. Non-contact cooling water is permitted.
- f) Outdoor unenclosed storage of road salt or other de-icing chemicals.
- g) Dumping of snow containing de-icing chemicals brought from outside the district.
- h) Animal feedlots - Unpermitted.
- i) Automotive service and repairs shops, junk and salvage yards.
- j) All on site handling, disposal, storage, processing or recycling of hazardous or toxic materials except for materials used for normal residential, agricultural or silvicultural activities.
- k) Drycleaning or laundry facilities.

#### **4.2.6 Permitted Uses**

The following activities shall be permitted provided they are conducted in accordance with the purposes and intent of this section:

- a) Development, as defined in Article 2 of this Zoning Ordinance, except as prohibited in paragraph 4.2.7 of this section.
- b) Activities designed for conservation of soil, water, plants and wildlife.

- c) Outdoor recreation, nature study, boating, fishing and hunting where otherwise legally permitted.
- d) Normal operation and maintenance of existing water bodies and dams, splash boards and other water control, supply and conservation devices.
- e) Foot, bicycle, and/or horse paths and bridges.
- f) Maintenance, repair of any existing structures.
- g) Farming, gardening, nursery, forestry, harvesting and grazing, provided that fertilizers, herbicides, pesticides, and other leachables are used appropriately at levels that will not cause groundwater contamination and are stored under shelter.
- h) De-icing chemicals may be used by the road agent subject to the approval of the Board of Selectmen.

#### **4.2.7 Sub-surface Waste Water Disposal Systems**

The following more stringent requirements shall apply to all sub-surface waste water disposal system construction:

- a) There will be no filling of wetlands allowed to provide the minimum distance of sub-surface waste water disposal systems to wetlands.
- b) The seasonal high water table will be at least 2 feet below the original ground surface.
- c) There will be at least 3 feet of natural permeable soil above any restrictive soil layer.
- d) There will be at least 4 feet of natural soil above bedrock.
- e) There will be at least 125 feet setback for sub-surface waste water disposal systems from wetlands as defined in the Deering Wetlands Conservation District.
- f) Standards for fill material: Fill material consisting of organic soils or other organic materials such as tree stumps, sawdust, wood chips and bark, even with a soil matrix shall not be used. The in

place fill should have less than 15% organic soil by volume. The in place fill should not contain more than 25% by volume of cobbles (6 inch in diameter). The in place fill should not have more than 15% by weight of clay size (.002mm and smaller) particles. The fill should be essentially homogeneous. If bedding planes and other discontinuities are present, detailed analysis is necessary.

#### **4.2.8 Special Exceptions**

The following uses are permitted as Special Exceptions within the Aquifer Protection District (in compliance with this Zoning Ordinance):

- a) Industrial and commercial uses not otherwise prohibited in paragraph 4.2.5 unless and except to the extent that anyone proposing to engage in such prohibited uses can demonstrate to the satisfaction of the Zoning Board of Adjustment that the proposed use will not pose a threat to the aquifer. (Amended March 11, 2003)
- b) Multi-family residential development. Minimum lot size to be determined by using Section 4.1 of this Zoning Ordinance.
- c) Sand and gravel excavation and other mining provided that such excavation or mining is not carried out within eight (8) vertical feet of the seasonal high water table and that periodic inspections are made by the Planning Board or its agent to determine compliance.

#### **4.2.9 Criteria for Special Exceptions**

The Zoning Board of Adjustment may grant a special exception for those uses listed above only after written findings of fact are made that all of the following are true:

- a) The proposed use will not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants;
- b) The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer;



- c) The proposed use will discharge no waste water on site other than that typically discharged by domestic waste water disposal systems and will not involve on-site storage or disposal of toxic or hazardous wastes as herein defined;
- d) The proposed use complies with all other applicable sections of this Article.

#### **4.2. 10 Additional studies with Special Exception Applications**

The Zoning Board of Adjustment may require that the applicant provide data or reports prepared by a professional hydrogeologist to assess any potential damage to the aquifer that may result from the proposed use. The Zoning Board of Adjustment may engage such professional assistance as it requires to adequately evaluate such reports and to evaluate, in general, the proposed use in light of the above criteria. Costs incurred shall be the responsibility of the applicant.

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

- a) **Safeguards.** Provision shall be made to protect against toxic or hazardous materials discharge or loss resulting from corrosion, accidental damage, spillage or vandalism through measures such as: spill control provisions in the vicinity of chemical or fuel delivery points; secured storage areas for toxic or hazardous materials; and indoor storage provisions for corrodible or dissolvable materials. For operations which allow the evaporation of toxic or hazardous materials into the interiors of any structures, a closed vapor recovery system shall be provided for each such structure to prevent discharge of contaminated condensate into the groundwater.
- b) **Location.** 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 Aquifer Protection District to the extent feasible.
- c) **Drainage.** All runoff from impervious surfaces shall be recharged on the site, and diverted toward areas covered with vegetation for surface infiltration to the extent possible. Dry wells shall be used only where other methods are not feasible, and shall be preceded by oil, grease, and sediment traps to facilitate removal of contaminants.

- d) Inspection. All special exceptions granted under paragraph 4.2.8 may be subject to annual inspections by the Building Inspector or other agent designated by the Selectmen. The purpose of these inspections is to ensure continued compliance with the conditions under which approvals were granted. (Amended March 11, 2003)

#### **4.2.12 Non-Conforming Uses**

- a) Any non-conforming use may continue subject to the requirements of Section 5.3 of this Zoning Ordinance.
- b) Any non-conforming lot of record existing before the effective date of this Article may be used in accordance with section 4.2.5 and 4.2.6 of this section.

**ARTICLE 4, SECTION 3 National Floodplain Development<sup>10</sup>**  
(Adopted March 12, 1991)

**4.3.1 Introduction**

- a) The following regulations shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency [FEMA] in its "Flood Insurance Study of the Town of Deering, New Hampshire" together with the associated Flood Insurance Rate Maps of the Town of Deering dated August 1, 1979 which are declared to be a part of this ordinance.
- b) This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Deering Floodplain Development Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Deering Zoning Ordinance, and shall be considered part of the Zoning Ordinance for purposes of administration and appeals under state law. If any provision of this ordinance differs or appears to conflict with any provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling. (Amended March 11, 1997)

**4.3.2 Definition of Flood Plain Terms**

**Area of special flood hazard:** The land in the flood plain within the Town of Deering subject to a 1 percent or greater chance of flooding in any given year. The area is designated as Zones A or AE on the Flood Insurance Rate Map.

**Base Flood:** The flood having one percent chance of being equaled or exceeded in any given year.

**Basement:** Any area of the building having its floor subgrade (below the ground) on all sides.

**Building:** See "structure".

**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 or storage of equipment or materials.

**FEMA:** The Federal Emergency Management Agency

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

- a) The overflow of inland or tidal waters.
- b) The unusual and rapid accumulation or runoff of surface waters from any source.

**Flood elevation study:** An examination evaluation and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e. mudflow) and/or flood-related erosion hazards.

**4.3.2.9 Flood Insurance Rate Map (FIRM):** An official map of the community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study:** See "Flood elevation study".

**Flood plain or Flood-prone area:** Any land area susceptible to being inundated by water from any source (see definition of "flooding").

**Flood Proofing:** 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 sanitary facilities, structures and their contents.

**Floodway:** see "regulatory floodway".

**Functional dependent use:** 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 facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

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

**Historic Structure:** Any structure that is:

- a) 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;
- b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district preliminarily determined by the Secretary to qualify as a registered historic district;
- c) 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
- d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior, or directly by the Secretary of the Interior in states without approved programs. (Adopted March 11, 1997)

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

**Mean sea level:** For the purposes of the National Flood Insurance Program, 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.

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

**Manufactured home park or subdivision:** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**New Construction:** For the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structure for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. (Adopted March 11, 1997)

**100-year flood:** see "base flood".

**Recreational vehicle:** 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 towable 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. (Adopted June 13, 1994)

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

**Riverine:** Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Special flood hazard area** - see "Area of Special Flood Hazard"

**Structure:** For flood plain management purposes means 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 improvement, 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 a site, such as 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 a 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 not part of the main structure.

**Substantial damage:** 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. (Adopted March 11, 1997)

**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:

- a) the appraised value prior to the start of the initial repair or improvement, or
- b) 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. "Substantial improvement" includes structures that have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure".

**Violation:** The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) [Code of Federal Regulations (CFR 60.3)] is presumed to be in violation until such time as that documentation is provided. (Adopted March 11, 1997)

**Water surface elevation:** 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 flood plains of coastal or riverine areas. (Amended March 11, 2003)

#### **4.3.3 National Flood Insurance Program Requirements**

**Item I** -- All "proposed" development in any special flood hazard areas shall require a permit.

**Item II** -- The Building Inspector shall review all building 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 in a flood-prone area, all new construction and substantial improvements shall:

- a) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of structure resulting from hydrodynamic and hydrostatic loads, including effects of buoyancy.
- b) be constructed with materials resistant to flood damage.
- c) be constructed by methods and practices that minimize flood damages and
- d) 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 the conditions of flooding.

**Item III** -- Where new and replacement water and sewer systems (including on-site systems) are proposed in flood-prone areas the applicant shall provide the Building Inspector with assurance that the



new and replacement sanitary sewage 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.

**Item IV --** The Building Inspector shall review proposed developments to assure 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 of 1948, as amended, 33 U.S.C. § 1344. It shall be the responsibility of the applicant to certify these assurances to the Building Inspector. (Amended March 11, 2003)

**Item V --** The Building Inspector shall review proposed developments to assure 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. It shall be the responsibility of the applicant to certify these assurances to the Building Inspector.

**Item VI**

- a) In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of New Hampshire Department of Environmental Services and submit copies of said notification to the Building Inspector, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Bureau. (Amended March 11, 2003)
- b) Within the altered or relocated portion of any watercourse, the applicant shall submit to the Building Inspector, certification provided by a registered professional engineer assuring that the flood carrying capacity of the watercourse has been maintained.
- c) Along watercourses with a designated Regulatory Floodway no encroachments, including fill new construction, substantial improvements, and other development are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not

result in any increase in flood levels within the community during the base flood discharge.

- d) Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zone AE 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.
- e) The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:
  - "No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge. (Amended March 15, 2008).

## **Item VII**

- a) In special flood hazard areas the Building Inspector shall determine the 100-year flood elevation in the following order of precedence according to the data available.
  - i. In Zone AE refer to the elevation provided in the community's Flood Insurance Study and accompanying FIRM or FHBM. (Amended March 15, 2008).
  - ii. In unnumbered A zones the Building Inspector shall obtain, review, and reasonably utilize any 100 year flood elevation data available from Federal, State, development proposals submitted to the Community (example subdivisions, site approvals, etc.) or other sources.
- b) The Building Inspector's 100 year flood elevation determination will be used as criteria for requiring in Zones AE and A that:
  - i. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the 100 year flood level.
  - ii. That all new construction and 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

- (a) be flood proofed so that below the 100 year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
- (b) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy and
- (c) 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. (Amended March 15, 2008).

- c) All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces;
- d) Recreational vehicles placed on sites within Zones AE and A shall either
  - i. be on the site for fewer than 180 consecutive days,
  - ii. be fully licensed and ready for highway use, or
  - iii. 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" on Paragraph (c)(6) of Section 60.3. (Amended June 13, 1994 and March 15, 2008).
- e) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted providing the enclosed areas meet the following requirements:
  - i. The enclosed area is unfinished or flood resistant, usable solely for parking of vehicles, building access or storage;
  - ii. The area is not a basement;
  - iii. Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. 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 floodwaters.

**Item VIII: Variances and Appeals** (Adopted March 11, 1997)

- a) Any order, requirement, decision or determination of the building inspector under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
- b) If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:
  - i. that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary expense.
  - ii. 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.
  - iii. that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- c) The Zoning Board of Adjustment shall notify the applicant in writing that:
  - i. the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and
  - ii. such construction below the base flood level increases risks to life and property.Such notification shall be maintained with a record of all variance actions.
- d) The community shall:
  - i. maintain a record of all variance actions, including the justification for their issuance; and

- ii. report such variances issued in its annual biennial report submitted to FEMA's Federal Insurance Administrator.  
(Adopted March 11, 2003)

**ARTICLE 4, SECTION 4 Shoreland Protection<sup>11</sup>** (Enacted March 11, 1997 and amended March 15, 2008).

**4.4.1 Authority**

Pursuant to the authority granted by RSA 674:16 this section is adopted by the Town of Deering in order to protect the public health, safety, and general welfare.

**4.4.2 Purpose**

This section establishes standards for the subdivision, use and development of shorelands adjacent to protected surface waters of all fourth order streams (and greater) and the lakes and great ponds within the Town of Deering, including but not limited to the Deering Reservoir (Deering Lake), Dudley Pond, the Contoocook River, and the Piscataquog River from the outflow of Deering Reservoir to the Weare Town line, for the purpose of minimizing degradation of shorelands and assuring retention of the benefits provided by such shorelands. These benefits include:

- maintenance of safe and healthy conditions; prevention and/or control of water pollution;
- protection of important fish, bird and wildlife habitat;
- reduction or elimination of flooding and accelerated erosion;
- protection of wetlands and their important natural functions; maintenance of water quantity and related stream flows during low flow periods;
- protection of shoreland cover as a means of maintaining water quality; and
- the conservation and protection of natural beauty and the scenic qualities which are critical attributes of the State.

**4.4.3 Definitions**

**Commissioner:** The commissioner of the Department of Environmental Services or designee.

**Department ("DES"):** The Department of Environmental Services.

**4.4.4 Shoreland Protection District**

The Shoreland Protection District is an overlay which is superimposed over the conventional existing zoning and includes within its boundary the protected shorelands adjacent to all protected surface waters within the Town.

#### **4.4.5 Prohibited Uses**

- a) Establishment or expansion of:
  - salt storage yards;
  - motor vehicle junk yards, as defined by RSA 236:91 and RSA 236:112;
  - solid or hazardous waste facilities.
- b) No fertilizer, except limestone, shall be used within 25 feet of the reference line of any property. Twenty-five feet beyond the reference line, low phosphate fertilizer, slow-release nitrogen fertilizer or limestone may be used on lawns and areas with grass.
- c) Bulk storage of chemicals.
- d) Bulk storage of petroleum products or hazardous materials, except the use of above-ground residential fuel oil or propane tanks of 1,100 gallons or less normally required to heat a residential unit and not located within 50 feet of the reference line.
- e) Sand and gravel excavations as defined in RSA 155-E:1. (Amended March 11, 2003)
- f) Processing of excavated materials.
- g) Dumping or disposal of snow and ice collected from roadways or parking areas outside the district.

#### **4.4.6 Restricted Uses**

- a) Water dependent structures shall be constructed only as approved by the Department pursuant to RSA 482-A.
- b) Public water supply facilities, including water intakes, pipes, water treatment facilities, pump stations and disinfectant stations, as permitted by the Commissioner of the DES.
- c) Public water and sewage treatment facilities as permitted by the Commissioner of the DES.
- d) Hydroelectric facilities, including but not limited to dams, dikes, penstocks, and powerhouses, shall be recognized as water

dependent, permitted by the Commissioner of the DES, as necessary.

- e) Public utility lines and associated structures and facilities as permitted by the Commissioner of the DES.
- f) No solid waste facility shall place solid waste within 250 feet of the reference line of protected surface waters. However, a solid waste facility may be allowed, subject to permitting conditions under RSA 149-M:9, to erect accessory structures and conduct other activities consistent with the operation of the facility within 250 feet of the reference line, such as filling, grading and installing monitoring wells and other drainage structures as is consistent with its solid waste permit as issued by the Department of Environmental Services. Under no circumstances shall the toe of any slope encroach within 150 feet of the reference line.  
(Amended March 11, 2003)

#### **4.4.7 Natural Woodland Buffer**

- a) A natural woodland buffer shall be maintained within 150 feet of the reference line. The purpose of this buffer shall be to protect the quality of the protected surface waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish, bird and wildlife habitat, and respecting the overall natural condition of the protected shoreland.
- a) The 50 foot buffer closest to the reference line shall be a natural waterfront buffer. This buffer shall be maintained in a natural state. For the purposes of determining whether sufficient tree cover exists, the waterfront buffer shall be divided into segments 50 feet deep following the reference line and 50 feet wide generally parallel to the side lot line. Should the waterfront frontage not be evenly divided by 50, a final partial segment shall be created, consisting of the remaining waterfront frontage multiplied by the 50 foot depth. Within each 2500 sq.ft. segment of the natural waterfront buffer, 50 points worth of trees shall be maintained, with trees having a diameter of 1 inch to 6 inches counting as 1 point, those greater than 6 inches to 12 inches in diameter counting as 5 points, and those exceeding 12 inches in diameter counting as 10 points. Tree diameters shall be measured at 4 ½ feet above ground level. For those partial segments, the



50 points shall be reduced by the percentage calculated by dividing the partial segment by a 2500 sq.ft total segment, any resulting fraction being rounded up to the next whole number.

- b) At least fifty percent of the area outside the allowable impervious surfaces in the remaining portion of the natural woodland buffer shall be maintained in a natural state having sufficient trees to meet the 50 point criteria above. Owners of lots legally developed prior to April 1, 2008 that do not comply with this standard are strongly encouraged to increase the percentage of the area maintained in a natural state.
- c) If the total tree score in any 2500 sq.ft. segment exceeds 50 points, trees and saplings may be removed as long as the sum of the scores for the remaining trees in that segment does not total less than 50 points. Trees in partial segments may be removed provided the remaining scores are equal to the proportional point requirement.
- d) A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place to the extent possible. Native species shall be utilized to replace and supplement trees required to maintain the 50 points per segment and for shrubs and ground cover within the natural woodland buffer.
- e) "Natural ground cover" means any herbaceous plant or any woody seedling or shrub generally less than 3 feet in height. Natural ground cover shall include naturally occurring leaf or needle litter, stumps, decaying woody debris, stones, and boulders. Natural ground cover shall not include lawns, invasive species as listed by the department of agriculture, markets, and food in accordance with RSA 430:53, III, exotic species as designated by rule of the department of environmental services in accordance with RSA 487:24, VII, imported organic or stone mulches, or other artificial materials.
- f) Owners of lots legally developed prior to April 1, 2008 may maintain, but not enlarge, cleared areas, including but not limited to existing lawns and beach areas within the waterfront buffer area.
- g) Normal trimming, pruning, and thinning of branches to the extent necessary to protect structures, maintain clearances, and provide

views shall be limited to the bottom half of trees and saplings. Shrubs and groundcover may be trimmed to provide views provided the resulting height of the vegetation is at least 3 ½ feet above the ground. Dead, diseased, unsafe or fallen trees, saplings, shrubs or ground cover that pose an imminent hazard to structures or have the potential to cause personal injury may be removed regardless of any requirements that pertain to the natural woodland buffer.

- h) Dead and living trees that provide dens, nesting places and perches for wildlife are encouraged to be retained. Planting efforts that are beneficial to wildlife are encouraged to be undertaken.
- i) When necessary for the completion of permanent construction activities, a temporary access path not exceeding 12 feet in width shall be allowed. The access path shall be completely restored and replanted with native vegetation upon completion of construction although a permanent foot path to the water body not exceeding 6 feet in width is allowed, provided it is configured in a manner that will not concentrate storm water runoff or contribute to erosion.

#### **4.4.8 Subsurface Wastewater Disposal Systems**

- a) The subdivision of a parcel of land shall be subject to subdivision approval by the department of environmental services under RSA 485-A:29 if any portion of the land to be subdivided is within the protected shoreland.
- b) All subsurface waste disposal systems must be designed and installed in accordance with DES publication Subdivision and Individual Sewage Disposal System Design Rules, Env-Ws 1000.
- c) The following conditions, based on the characteristics of the receiving soils as they relate to U. S. Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of subsurface wastewater disposal systems adjacent to ponds and lakes, as follows:
  - Where the receiving soil downgradient of the leaching portions of a subsurface wastewater disposal system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line.

- For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line.
  - For all other soil conditions the setback shall be no less than 75 feet from the reference line.
  - Adjacent to rivers the setback shall be no less than 75 feet from the reference line and may be greater if approved by the Commissioner.
- d) The placement of all septic tanks and leaching portions of subsurface wastewater treatment systems for replacement systems shall comply with the requirements of subparagraph 4.4.8 c) to the maximum extent feasible.

#### **4.4.9 Erosion and Siltation Control**

- a) All new structures, modifications to existing structures, and excavation or earth moving within the protected shoreland shall be designed and constructed in accordance with rules adopted by the DES pursuant to RSA 541-A, relative to terrain alteration under RSA 485-A:17, for controlling erosion and siltation of protected surface waters during and after construction, and shall at a minimum reflect the recommendations of the publication entitled Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire prepared for the DES by the Rockingham County Conservation District, in cooperation with U. S. Department of Agriculture, Natural Resources Conservation Service, August, 1992, as amended.
- b) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.
- c) A permit pursuant to RSA 485-A:17(I) shall be required for improved, developed or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

#### **4.4.10 Minimum Lot Requirements**

- a) The minimum lot size for new lots shall meet the minimum size requirements in paragraph 4.1.2 of this Zoning Ordinance and, if

dependent upon on-site subsurface wastewater treatment systems, shall be greater if required under Env-Ws 1000.

- b) New lots within this District shall have a minimum shoreland frontage of 150 feet including those within open space subdivisions.
- c) Setback. No structure shall be located within 50 feet of the reference line, except that accessory structures, including but not limited to storage sheds, pump houses, woodsheds and gazebos, but excluding automobile and other vehicle garages, may be located within the buffer zone by special exception so long as they meet the following requirements:
  - The structure is situated greater than 20 feet from the reference line;
  - There is no significant disturbance of soil, such as but not limited to: excavation, a subsurface foundation, the use of sono tubes, ground leveling or the addition of gravel or similar material;
  - The Town of Deering Planning Board (or the Zoning Administrator if he or she is so empowered by the Planning Board) determines that construction and dimensions of the structure are consistent with the intent of Article 4 and this Article to maintain a natural vegetated buffer within the Shoreland Protection District and the Watershed Protection Overlay;
  - The structure meets the requirements of RSA 483-B:4.
- d) In the Shoreland Protection District all setbacks shall be measured from the closest point on the structure to the reference line, right-of-way, side or back lot line, as appropriate.
- e) Parcel coverage by impervious materials shall not exceed 20%.

#### **4.4.11 Water Dependent Uses and Structures**

The following uses and structures are permitted within the Shoreland Protection District provided they comply with all applicable local, State and Federal regulations.

- a) Marinas developed in accordance with the following:
  - Minimum shoreland frontage shall be 300 feet with

an additional 25 feet of shoreland frontage for each slip.

- Off street parking shall be provided at a rate of 500 square feet per boat slip, or more if the Planning Board so determines.
- Submission of an environmental impact study which indicates mitigation measures to minimize potential negative impact on the protected surface waters, including but not limited to measures to be taken to prevent leakage or spills of fuels, lubricants, waste products or other potential pollutants into the protected surface waters and assurances that impacts on wetlands and related sensitive areas and habitats will be avoided.
- Submission of a site plan for review by the Planning Board which includes location of parking, rest rooms, buildings and related support facilities, with assurances that these facilities are permanently available to the project.
- Receipt of a permit from the DES.

b) Water dependent structures including, but not limited to, decks, wharves, swimming floats and boat ramps.

c) Other water dependent uses and structures approved as special exceptions by the Zoning Board of Adjustment in accordance with the following:

- The use is in keeping with the purpose and intent of these regulations.
- The least impacting route and methodology for the use has been selected and represents the best practicable alternative.
- Canopies and seasonal covers extend only over the boat slips and shall be removed during the non-boating season.

#### **4.4.12 Non-conforming Lots of Record**

Existing individual undeveloped non-conforming lots of record within the Shoreland Protection District may be used for any allowed use and related facilities, including, but not limited to, decks, piers, boat houses, boat landing ramps, walkways and other water dependent structures in accordance with the following:

a) All leach fields shall meet the setback requirements of paragraph 4.4.8. In the event that the leach field cannot physically be located on the lot in conformity with this ordinance and the

owner is unable to acquire additional land or a permanent easement to such land for this purpose, the owner shall apply for a variance from the Commissioner in accordance with RSA 483-B:9(V)(g).

- b) The construction of single family residential dwelling units and related structures shall conform in all other respects to this Zoning Ordinance and Subdivision Regulations.

#### **4.4.13 Non-conforming Structures**

- a) Except as otherwise prohibited by law, nonconforming structures located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but shall result in no expansion of the existing footprint except as authorized by the department pursuant to paragraph b) below. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line for nonconforming structures erected prior to July 1, 1994.
- b) When reviewing requests for the redevelopment of sites that contain nonconforming structures or any expansions of nonconforming structures, the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is "more nearly conforming" means a proposal for significant changes to the location or size of existing structures that bring the structures into greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

#### **4.4.14 Non-conforming Uses**

- a) Existing uses which are non-conforming under this ordinance may continue subject to the requirements of Section 5.3 of this Zoning Ordinance.
- b) Existing non-conforming uses shall be required to meet the shoreland natural buffer, drainage and related water quality protection requirements of this section to the maximum extent feasible.

#### **4.4.15 Commonly Used Water Front Parcels or Lots**

Shorefront lots/parcels which are intended for use for common access by the non shoreland property owners within the development or subdivision which owns or has control over the common land shall:

- a) Contain a minimum of one acre;
- b) Have a minimum shoreland frontage of 150 feet for the first ten residential units and an additional 10 feet for each additional unit;
- c) Have no structures other than toilet facilities, picnic shelters and/or recreational facilities. Necessary leach fields shall be located at least 125 feet from the reference line.
- d) Swimming areas shall be separated from boating areas by ropes and appropriate marks, subject to the approval of the Safety Services Division of the New Hampshire Department of Safety.
- e) Off street parking shall be provided on the basis of 300 square feet, or more if so determined by the Planning Board, for each residential unit 1/4 mile or more from the common area which has use of the area.
- f) Toilet facilities shall be provided on the basis of one facility each for men and women for each 25 residential units.
- g) Impervious cover for roof area, parking lots, access roads, sidewalks and any other similar cover over or on the parcel or lot shall not exceed 10% of the area of the parcel or lot.

#### **4.4.16 Exemptions**

This section shall apply to areas and activities within the protected shoreland with the exception of forest management that is not

associated with shoreland development or land conversion, and is conducted in compliance with RSA 227-J:9; forestry conducted by or under the direction of a water supplier for the purpose of managing a water supply watershed; and 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, provided such activities and operations are in conformance with the most recent best management practices as determined by the United States Department of Agriculture Natural Resources Conservation Service, the University of New Hampshire Cooperative Extension Service and the New Hampshire Department of Agriculture. Persons carrying out such agricultural activities and operations in the protected shoreland shall work directly with the local representatives of the above agencies for their particular property. (Amended March 11, 2003).



**ARTICLE 4, SECTION 5 Watershed Protection** (Adopted March 8, 2005)

**4.5.1 Authority and Statement of Intent**

Pursuant to RSA 674: 21, the Town of Deering adopts a Watershed Protection Overlay Zone, and accompanying regulations to ensure the protection and preservation of Deering Reservoir, hereafter referred to as Deering Lake, the Deering Lake watershed and the water bodies within the Watershed Protection Overlay Zone from the effects of point and non-point source pollution or sedimentation . The establishment of the Watershed Protection Overlay Zone and the adoption of these regulations are intended:

- a) to protect public health,
- b) to protect aquifers, which serve as existing or potential water supplies, and the aquifer recharge system
- c) to protect surface waters and wetlands contiguous to surface waters,
- d) to protect the natural areas and wildlife habitats within the Watershed Protection Overlay Zone by maintaining ecological balances, and
- e) to prevent the degradation of the water quality through the regulation of land uses and development within the Watershed Protection Overlay Zone.

**4.5.2 Applicability**

- a) The special provisions established herein shall apply to all development proposals and to potential contaminating activities within the Watershed Protection Overlay Zone, and all such proposals and activities shall be subject to the review requirements set forth in Article 4, Section 5.6. The boundaries of the Watershed Protection Overlay Zone have been delineated by the Planning Board using current location data. The Watershed Protection Overlay Zone is shown on the master zoning map kept on file in the Town Hall.
- b) The boundaries of the Watershed Protection Overlay Zone may be identified through drainage, groundwater and soils analyses and

are considered to be essential to the protection of the watershed 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.

#### **4.5.3 Administration**

The Deering Planning Board shall have sole and exclusive authority to administer the provisions of this section. The Planning Board is further authorized to adopt amendments to the subdivision regulations in order to further administer the requirements of this section. All development proposals and other potential contaminating activity occurring wholly or partly in an area within the Watershed Protection Overlay Zone shall be subject to this section 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 this 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. Initial reviews and evaluations required by Section 4.5.6.3 shall be conducted by the Town of Deering Planning and Zoning Administrator on behalf of the Planning Board. If it is desired to have the full Planning Board consider an initial review or evaluation, a request for full Board consideration must be filed with the Planning and Zoning Administrator within 3 weeks of its issuance. If no such request is filed, the initial evaluation will become final.

#### **4.5.4 Prohibited Uses**

Permitted uses, special exception uses, accessory uses, dimensional standards and special requirements established by the underlying zoning district shall apply, except as modified below:

The following uses shall be specifically prohibited within the Watershed Protection Overlay Zone:

- a) Storage or production of hazardous materials as defined in either or both of the following:
  - Superfund Amendment and Reauthorization Act of 1986.
  - Identification and Listing of Hazardous Wastes, 40 C.F.R. §261 (1987)
  
- b) Disposal of hazardous materials or solid wastes

- c) 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.
- d) 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 Deering Code Enforcement Officer to certify they are in compliance with hazardous material regulations.
- e) Disposal of septage or septic sludge, as defined by New Hampshire Solid Waste Rules Env-Wm101-300 & 2100 - 3700.
- f) Automobile service and repair stations
- g) Junkyards and Salvage Yards

#### **4.5.5 Review requirements for Development in the Watershed Protection Overlay Zone**

- a) General. Applications for subdivision of land and for site plan review are subject to all review requirements of this Section, including the requirement to submit a hydrologic study. Applications for new home construction, and additions, modifications and repairs of existing homes, 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 soil erosion plan as set forth below. This section does not establish any pre-approval requirements for other land development proposals that do not involve potential contamination. (Amended March 15, 2008).
- 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 Protection Overlay Zone, 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 below. Said study must document, in a manner acceptable to the Planning Board, that the land development proposed would provide the same or a greater degree of water quality protection as existed on the site(s) in question at the time the application is made.

- c) Existing land uses located within the Watershed Protection Overlay Zone and identified as potential contaminating activities by the Planning Board shall include a spill prevention control and countermeasure plan as described below.

#### **4.5.6 Review criteria**

All development within the Watershed Protection Overlay Zone will be evaluated by the Planning Board to ensure that:

- a) Non-point source pollution is prevented to the maximum extent possible, taking into account site conditions such as slope, soil type and erosivity, and vegetative cover. The amount of lawn is limited to 10% of all dry land.
- b) Best Management Practices (BMPs) are in place sufficient to remove or neutralize those pollutants that present a potential impact to the water body. In the case of proposals for new home construction, the proposal shall include an erosion and sedimentation control plan prepared by a licensed engineer. The use or creation of holding-ponds is not allowed for runoff control.
- c) Grading and removal of vegetation at a development site is minimized and erosion and sedimentation control measures are in place and properly installed.
- d) All septic tanks will be pumped and inspected by a State of New Hampshire licensed septic services provider to ensure proper functioning and a copy of the pumping and inspection report shall be sent to the Town of Deering [Planning and Zoning Administrator]: Attention Administrative Assistant within 30 days of its occurrence. Such pumping and inspection shall occur at least every three years or at the interval recommended by the licensed septic service provider in writing at the time of last service or the interval recommended in writing by a State certified septic system evaluator following an examination of the system and a review of the most recent prior inspection report. When an existing septic system within the Watershed Overlay is replaced or repaired, or a new septic system is installed where one did not previously exist to service a dwelling within the Watershed Overlay, the licensed septic system designer shall specify the interval recommended for pumping and inspection of that system under this provision. If two or more dwelling units share a common sewage treatment system, a perpetual maintenance agreement binding the dwelling owner is required.

If a septic system remains in non-compliance with the interval required under this provision for 30 days after the owner of record has been notified by certified mail by the Town of Deering: 1) a penalty of \$250 shall be imposed, 2) the matter shall be considered a potential threat to health, and 3) the matter shall be referred to the Town of Deering Health Officer for enforcement. The initial \$250 penalty shall double every six (6) months that the septic system remains in non-compliance, to a maximum allowed by the State of New Hampshire RSA's then in effect. The Planning Board may waive this provision upon appeal for justifiable cause. The amendments to this section shall take effect on July 30, 2015. (Amended March 10, 2015)

- e) Activities involved in potential contamination within the Watershed Protection Overlay Zone, but which have received a special exception, must submit a spill prevention control and countermeasures plan (SPCC Plan) for approval. This plan shall include the following elements:
- Disclosure statements describing the types, quantities, and storage locations of all contaminants that will be part of the proposed project.
  - Contaminant handling and spill prevention techniques
  - Spill reporting procedures, including a list of affected agencies to be contacted in the event of a spill
  - Spill recovery plans, including a list of available equipment
  - Spill clean-up and disposal plans

#### **4.5.7 Hydrologic Study**

A hydrologic study performed by a registered professional engineer or hydrologist 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. The study shall include, at a minimum, the following information:

- a) 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.
- b) Characteristics of natural runoff on the site and projected runoff with the proposed project, including its rate and chemical characteristics deemed necessary to make an adequate assessment of water quality.

- c) Measures proposed to be employed to reduce the rate of runoff and pollutant loading of runoff from the project area, both during construction and after.
- d) 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 predevelopment conditions. Special emphasis shall be placed on the impacts of proposed encroachments into the required buffer.
- e) Where the developer of property subject to the terms of this section 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 run with the land in a manner that will be acceptable to the Planning Board.

The study will make use of existing Deering Lake water quality historical data to the maximum extent possible. If new data is to be introduced, the Town reserves the right to have the data reviewed by an independent expert at the expense of the property developer.

#### **4.5.8 Buffer Requirements**

- a) A 75 foot wide buffer zone shall be maintained along the edge of any tributary stream discharging into Deering Lake and along the edge of any wetlands associated with those tributary streams. The required setback distance shall be measured from the centerline of such tributary stream and from the delineated edge of a wetland. Streams and wetlands shall be delineated from their mean high water mark. The buffer zone shall be maintained in its natural state to the maximum extent possible.
- b) A reduction in the required buffer zone width down to not less than fifty feet (50') may be granted by the Planning Board upon presentation of a hydrologic or other study that provides documentation and justification, acceptable to the Planning Board, that even with the reduction, the same or a greater degree of water quality protection would be afforded as would be with the 75 foot wide 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 additional erosion, runoff or sedimentation control measures, as deemed necessary to protect water quality. (Amended March 15, 2008).

- c) All development shall be located outside of the required buffer zone, except that accessory structures, including but not limited to storage sheds, pump houses, woodsheds and gazebos, but excluding automobile and other vehicle garages, may be located within the buffer zone by special exception so long as they meet the following requirements
- The structure is situated greater than 20 feet from the reference line;
  - There is no significant disturbance of soil, such as but not limited to: excavation, a subsurface foundation, the use of sono tubes, ground leveling or the addition of gravel or similar material ;
  - The Town of Deering Planning Board (or the Zoning Administrator if he or she is so empowered by the Planning Board) determines that construction and dimensions of the structure are consistent with the intent of Article 4 and this Article to maintain a natural vegetated buffer within the Shoreland Protection District and the Watershed Protection Overlay;
  - The structure meets the requirements of RSA 483-B:4.

#### **4.5.9 Natural woodland buffer**

A natural woodland buffer shall be maintained in the buffer in the Watershed Protection overlay district. This buffer shall comply with the specifications and point system as described in 4.4.7, provided however the 2500 sq.ft. segments shall be 75 feet deep or such reduced width if a reduction has been granted by the Planning Board as specified above.

#### **4.5.10 Prohibited uses within the Buffer Zone or within 25 feet of the buffer zone**

The following uses shall not be permitted within the buffer zone or within twenty five feet (25') of any required buffer zone:

- a) those uses prohibited in section 4.5.4;
- b) sub-surface waste water disposal tanks and drain-fields;
- c) feed lots or other livestock impoundments;

- d) trash containers and dumpsters which are not under roof or which are located so that leachate from the receptacle could escape unfiltered and untreated;
- e) fuel storage in excess of fifty (50) gallons [200L];
- f) sanitary landfills;
- g) lawns;
- h) activities involving the manufacture, bulk storage or any type of distribution of petroleum, chemical or asphalt products or any materials hazardous to Deering Lake (as defined in the Hazardous Materials Spills Emergency Handbook, American Waterworks Association, 1975, as revised) including specifically the following general classes of materials:
  - oil and oil products
  - radioactive materials
  - any material transported in large commercial quantities that is a very soluble acid or base, highly biodegradable, or can create a severe oxygen demand
  - biologically accumulative poisons
  - 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.)
  - substances lethal to mammalian or aquatic life.
  - road salt



## **ARTICLE 5: BOARD OF ADJUSTMENT AND ADMINISTRATION**

### **ARTICLE 5, SECTION 1      The Zoning Board of Adjustment<sup>12</sup>**

**5.1.1** The Board of Selectmen shall be the appointing authority for the Zoning Board of Adjustment. Such zoning board shall have the powers and jurisdiction and be subject to all the duties, requirements, and other provisions applicable to zoning boards of adjustment under RSA 673, as amended.

**5.1.2** The Zoning Board of Adjustment is authorized to impose reasonable fees upon an applicant for the expense of consultant services or investigative studies, review of documents and other such matters that may be required by a particular application. Any such fees shall be subject to the provisions of RSA 673:16. (Adopted March 11, 2003)

**5.1.3** Special exceptions are granted for a specific use in a specific location, and neither a special exception nor a non-permitted activity exempted because it was active on the effective date of the Zoning Ordinance may be transferred to a different property or a different or additional use. The Board of Selectmen shall determine when there is a change of use. (Adopted March 13, 2001)

**5.1.4** All known abutters shall be notified by the Board of Adjustment by certified mail at least one week prior to any public hearing regarding the site. The names and addresses of the known abutters shall be supplied by the applicant on a plot plan to be submitted to the Board of Adjustment.

**5.1.5** A plan must accompany the application for special exception and variance. The minimum acceptable plan will have the following characteristics: (Adopted March 8, 1988)

- Be drawn to scale with a north arrow and show:
- Lot dimensions and bearings and any bounding streets and their right-of-way widths or half sections.
- Locations and dimensions of existing or required service areas, buffer zones, landscaped areas, recreation areas, safety areas, rights-of-way, streams, flood plains, wetlands, drainage and easements.
- All existing buildings or other structures with their dimensions and encroachments.
- All proposed buildings, structures or additions with dimensions and encroachments indicating "proposed" on the plan.

- “Zoning envelope” made from setbacks required by the zoning ordinance. Indicate zone classification and all setback dimensions.
- Computed lot and building areas and percentages of lot occupancy.
- Location and numbering of parking spaces and lanes with their dimensions. Indicate how parking spaces were computed.
- Dimensions and directions of traffic lanes, entrances and exits.
- Loading and unloading and trash areas.

**5.1.6** All individuals planning to make a request for special exception or variance are permitted a consultation with the Board of Adjustment for the discussion and clarification of the general requirements for special exception or variance including plan requirements. Such consultation is not a hearing and is not a commitment by the Board to grant the special exception or variance. (Adopted March 8, 1988)

**ARTICLE 5, SECTION 2 Enforcement:**

This ordinance shall be enforced by the Board of Selectmen, and the Board of Selectmen is given power and authority to enforce the provisions of this Ordinance. The Board of Selectmen may appoint an administrative official to administer the provisions of this Ordinance. Upon any well-founded information that this Ordinance is being violated, the Selectmen shall seek an injunction in Superior Court or shall take such other legal action as they consider appropriate, including, but not limited to, the imposition of fines and penalties under RSA 676:17 and the issuance of Cease and Desist Orders under RSA 676:17-a and Local Land Use Citations under RSA 676:17-b. (Amended March 13, 2001)

**ARTICLE 5, SECTION 3 Non-Conforming Structures and Uses<sup>13</sup>**

**5.3.1** It is the intent of this Zoning Ordinance that, consistent with the provisions of law protecting nonconforming uses and structures, such nonconforming uses and structures should be reduced to conformity with these ordinances as completely and rapidly as possible.

**5.3.2** Any non-conforming use or structure may continue and may be maintained or repaired, unless such use is determined by the Board of Selectmen to be an imminent hazard to public health and safety. A

non- conforming use shall not be:

- a) expanded;
- b) changed to another non-conforming use; or
- c) renewed after it has been discontinued for a period of one (1) year or more.

**5.3.3** The dimensions of a non-conforming structure may be expanded or extended only where such expansion or extension does not increase or expand the non-conformity in size or degree and does not make any existing conforming structure non-conforming within the provisions of this zoning ordinance. Notwithstanding the foregoing, no expansion shall be allowed which has the effect of increasing the height of a structure beyond the limits allowed by paragraph 4.1.4 d. or violates any other dimensional requirement of this zoning ordinance.

A non-conforming use other than enlargement or extension of a structure may be expanded only when such expansion is otherwise permitted by law.

**5.3.4** If any non-conforming structure is partially or totally destroyed by reason of obsolescence, fire or other act of God, the Zoning Administrator may issue a permit for its rebuilding provided that:

- a) it is restored, remodeled and operated within 2 years of the destruction
- b) proximity to a lot line or right-of-way may be no nearer than the lesser of the original building and the setbacks defined in section 4.1.4 a) through 4.1.4c) and
- c) the height does not exceed the limits set forth in 4.1.4 d).

**5.3.5** The Board of Adjustment may grant an extension to the 2-year period specified above if the applicant demonstrates the delay in exercising their rights was due to extenuating circumstances beyond their control. (Adopted March 15, 2008).

**ARTICLE 5, SECTION 4 Telecommunications Facilities<sup>14</sup>** (Enacted March 14, 2000)

**5.4.1 Authority**

Pursuant to the authority granted by RSA 674.16 and the authority reserved to local governments by the Telecommunications Act of 1996, this ordinance is adopted by the Town of Deering in order to protect the public health, safety and general welfare of its residents.

**5.4.2 Purpose**

In accordance with the requirements of the Telecommunications Act of 1996, this section is designed to balance the interests of residents, telecommunications providers and telecommunications customers in the siting of telecommunication facilities within the Town of Deering, ensuring a coordinated development of a communications infrastructure while preserving the interests of the Town and its residents. In addition to certain specific requirements, this section establishes general guidelines for the siting of telecommunication facilities as follows:

- a) Preserve the authority of Town boards to place reasonable conditions on the siting of telecommunication facilities.
- b) Minimize visual impacts of such facilities, as well as impacts on environmentally sensitive areas, historically significant locations and residential areas, including property values, through the siting and the configuration of facilities.
- c) Assure the safety of air traffic, particularly aircraft using the airport in West Deering.
- d) Encourage the co-location of facilities by both competitors and non-competing users as well as municipal authorities on single structures, including pre-existing towers and antennae, and consideration of the availability of alternative tower structures and alternative siting locations without regard to the political jurisdiction of the Town.
- e) Assure continued maintenance and safety inspections for all facilities.
- f) Assure access to telecommunication facility sites to police, fire, rescue and other authorized personnel.

- g) Assure the removal of abandoned facilities and provide a financial mechanism for the Town to remove such abandoned facilities for the protection of the Town and its residents.

### **5.4.3 Special Exception Required**

- a) Telecommunication facilities may be maintained and operated by Special Exception granted by the Zoning Board of Adjustment, conditional upon Site Plan Review by the Planning Board as provided under RSA 674:43.
- b) Residential television and radio antennae are exempted.
- c) The Zoning Board of Adjustment and the Planning Board may impose conditions to the extent the Boards conclude such conditions are necessary to minimize any adverse impact of the proposed facility on the Town or adjoining properties, preserve the intent of this ordinance, or assure the availability of a permitted telecommunication facility for municipal emergency communication needs.
- d) The Zoning Board of Adjustment may grant a special exception for a telecommunication facility provided that it finds that the specific site is an appropriate location for such a use in terms of overall community development; the use as developed will not adversely affect the neighborhood; and the use will not be a nuisance or serious hazard to adjacent land uses. In reaching its decision on whether to grant or deny the proposed special exception, the following factors are to be considered:
- Height of proposed tower or other structure.
  - Proximity of tower to residential development.
  - Nature of uses on adjacent and nearby properties.
  - Surrounding topography.
  - Surrounding tree coverage and foliage.
  - Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
  - Proposed ingress and egress to the site.
  - Availability of suitable existing towers and other structures.
  - Visual impacts on viewsheds and ridgelines, and other impacts from tower location, tree and foliage clearing and placement of incidental structures.
  - Availability of alternative tower structures and alternative siting locations.

- e) A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot, provided the siting and construction performance requirements of Section 5.4.5 are met. Towers that are constructed, and antennae that are installed, in accordance with the provisions of this section, shall not be deemed to constitute the expansion of a nonconforming use or structure. Nor shall such facilities be deemed to be an "accessory" use or structure.
- f) Telecommunication facilities shall comply with the provisions of this section and all other sections of this Zoning Ordinance, where applicable. In the event of a conflict between the requirements of this section and the provisions of Sections Section 2, 3.1, 3.2, 3.3, 3.5, 4.1, 5.1, 5.2, and 5.3 of this Zoning Ordinance, the requirements in this section shall govern. Where the requirements of this section and Sections 4.2 through 4.4 apply, the more stringent shall govern.

**5.4.4 Submission Requirements** -- Applications requesting a Special Exception and Site Plan Review for a telecommunication facility shall be submitted at the same time to the Zoning Board of Adjustment and the Planning Board, respectively. The applicant shall submit a plan in accordance with the requirements of paragraph 5.1.6 of this Zoning Ordinance. In addition, the applicant shall submit the following information and documentation:

- a) Additional plat information: a scaled elevation view, topography, radio frequency coverage, tower height requirements, setbacks, access drives, parking, fencing, landscaping, and adjacent uses (up to 200 feet away).
- b) Written proof that the proposed use/facility complies with Federal Communications Commission (FCC) regulations on radio frequency (RF) exposure guidelines.
- c) Written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable Federal Communications Commission rules.
- d) An inventory of pre-existing towers and antennae that are within the jurisdiction of the Town and those outside the Town's jurisdiction that are within the proposed service area or within two

(2) miles of the Town's border. This shall include specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals under this ordinance or other organizations seeking to locate antennae within the jurisdiction of the Town.

- e) If the applicant is proposing to build a new tower, written evidence demonstrating that no existing structure within the geographic area required to meet applicant's engineering requirements can accommodate the applicant's proposed antenna. This evidence can consist of an analysis of the location, height, strength, potential interference within the proposed service area and costs or other factors which would make co-location impractical.
- f) A written agreement with the Town specifying that the applicant agrees to provide for maximum shared use of the facility with other telecommunication providers and with governmental agencies at industry standard lease rates. The applicant shall also provide notice to all commercial carriers in the region that a new facility is to be erected and that an opportunity for co-location exists.
- g) For towers and antennae, a coordinated viewshed analysis to include, at minimum, a test balloon moored at the site for the purpose of indicating the visibility of the proposed structure from all abutting streets and other key locations.
- h) Engineering information detailing the size and coverage required for the facility location. The Planning Board may have this information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Cost for this review shall be borne by the applicant in accordance with RSA 676:4 I (g).
- i) Any other information deemed necessary by the Zoning Board of Adjustment or Planning Board to assess compliance with this Zoning Ordinance.

#### **5.4.5 Siting and Construction Performance Requirements**

- a) Location - To preserve a site of historical significance and the primary scenic viewsheds of the Town, towers will not be permitted at the following locations:
- Clark Summit
  - Gregg Hill
- b) Height - To minimize the visual impact on viewsheds and on residences, and in consideration of safety to aviation, the maximum height of any new tower, including attached antennae, shall be 150 feet from ground level. For co-location of facilities on pre-existing towers and other structures, the maximum height, including attached antennae, shall be the current height plus 15%, or 199 feet from ground level, whichever is less.
- c) Configuration - Any tower over 90 feet in total height shall be a monopole, unless the applicant can show that this configuration cannot be used and no other location will provide the intended service.
- d) Setbacks and Separation
- Free-standing towers must be set back a distance equal to 125% of the height of the tower from any off-site residential structure and property line.
  - Towers and accessory facilities must satisfy the minimum zoning district setback requirements.
  - Towers over ninety (90) feet in height shall not be located within one-quarter mile of any existing tower that is over ninety (90) feet in height.
- e) Aesthetics and Lighting
- Towers shall maintain a neutral, non-reflective color so as to reduce visual obtrusiveness.
  - The design of the building and related structures at a tower site and antennae and supporting equipment on structures other than a tower shall, to the maximum extent possible, use materials, colors, textures, screening and landscaping that will blend the facilities with the natural setting and built environment.
  - Towers shall not be artificially lighted, unless required by the Federal Aviation Administration (FAA) or other applicable authority. If lighting is required, the Planning Board may review the available lighting alternatives and



- approve the design that would cause the least disturbance to abutters and the surrounding views.
  - Towers shall not contain any permanent or temporary signs, writing, symbols or graphic representation, other than small warning signs and small signs providing operational, safety or maintenance information placed as close to ground level as possible.
- f) Security Fencing and Gating - Towers shall be enclosed by decay-resistant security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device or other similar device to prevent tower access. The facility enclosure itself and roads leading through the property to the facility shall be provided with locked gates, with access provided to police, fire, rescue and any other essential Town personnel.
- g) Landscaping
- Towers shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least ten (10) feet wide outside the perimeter of the compound.
  - Natural vegetation is preferred, and existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible.
  - In locations where the visual impact of the tower would be minimal or where natural growth provides a sufficient buffer, the landscaping requirement may be reduced or waived entirely.
- h) Auxiliary Structures - Buildings and other structures required for the operation of telecommunication towers and antennae shall meet setback and other requirements of the Zoning Ordinance and shall be located and constructed so as to minimize visual impacts or any other impacts on nearby properties.
- i) Building Codes and Safety Standards
- To ensure that all facilities are constructed in accordance with the provisions of this section, the Planning Board shall conduct a post-construction inspection and shall certify compliance with this section.
  - To ensure the continuing structural integrity of towers and antennae, the construction plans for any tower shall

be reviewed and shall have affixed to the construction drawings the professional licensing stamp of a structural engineer licensed by the State of New Hampshire. The owner of a tower shall ensure that it is maintained in compliance with the standards contained in any building code adopted by the Town and the applicable standards for towers that are published by the Electronics Industries Association, as amended from time to time, and according to the construction plans approved by the Town. Failure to bring a tower into compliance within thirty (30) days of notice provided to the owner by the Town shall constitute abandonment and grounds for removal of the tower or antenna in accordance with Section 5.4.8 of this ordinance.

- j) Federal and State Requirements - All towers must meet or exceed current standards and regulations of the Federal Aviation Administration, the Federal Communications Commission and any other agencies of the Federal or State government with the authority to regulate towers and antennae. Failure to bring towers and antennae into compliance with revised standards and regulations within six (6) months of their effective date shall constitute grounds for removal of the tower or antennae in accordance with Section 5.4.8 of this ordinance.
- k) Applicability of Requirements - The requirements in this section shall supersede any and all other applicable standards found elsewhere in this or other Town ordinances or regulations, which are less strict. These requirements and limitations shall apply only to telecommunication facilities.

#### **5.4.7 Bonding Security and Insurance**

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Board of Adjustment shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable and/or unwilling to remove the tower in accordance with Section 5.4.8 of this ordinance. Bonding and surety shall be consistent with any such provision in the Subdivision Regulations and the Board shall require submission of proof of adequate insurance covering accident or damage.

#### **5.4.8 Removal of Abandoned Towers and Antennae**

Any tower or antenna that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety. In addition, any antenna and tower that fails to comply with Sections 5.4.6.9 and 5.4.6.10 relative to compliance with federal, state and local standards shall be considered abandoned. The owner shall remove the abandoned structure within ninety (90) days of receipt of a declaration of abandonment from the Town. A declaration of abandonment shall only be issued following a public hearing notice according to RSA 676:7, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within ninety (90) days, the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

#### **5.4.9 Waivers**

- a) The Zoning Board of Adjustment, by its own determination or on the recommendation of the Planning Board, may waive requirements of this Section when it finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing terms, or the purposes of these regulations may be served to a greater extent by an alternative proposal. The purpose of granting waivers under the provisions of this regulation shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by the terms of this section. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:
- The granting of the waiver will not be detrimental to the public safety, health or welfare or be injurious to other property and will promote the public interest.
  - The waiver will not, in any manner, vary the provisions of the Town's Zoning Ordinance or Master Plan.
  - The waiver will substantially secure the objectives, standards and requirements of this section.
  - A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to, topography and other site features, availability of alternative site locations, and geographic location of the property.
  - Size/magnitude of the project and availability of co-location has been evaluated.

- b) In granting waivers, the Board may impose such conditions, as it deems appropriate to substantially secure the objectives of the standards or requirements of this section.
- c) A request for a waiver shall be submitted in writing by the applicant with the application to the Board of Adjustment or the Planning Board. The request shall state fully the grounds for the waiver and all of the facts relied on by the applicant. Failure to submit the request in writing shall require an automatic denial of the waiver request.

#### **5.4.10 Notification**

Upon receipt of an application for special exception and site plan review, abutters and the public shall be notified of public hearings and any other public meeting pursuant to the provisions of RSA 676:7. The Planning Board shall also notify the planning boards of adjacent towns and regional and state agencies. Barring exceptional circumstances, the Board of Adjustment and the Planning Board shall conduct joint public hearings and public informational meetings as provided in RSA 676:2.

### **ARTICLE 5, SECTION 5 Rules and Regulations**

The Planning Board and the Zoning Board of Adjustment are hereby authorized and empowered to adopt procedures and rules for administration, implementation, and organization as are necessary for the efficient administration and enforcement of this Zoning Ordinance and any sections hereof.

## **SECTION 6: OPEN SPACE SUBDIVISION<sup>15</sup>** (Adopted March 8, 2005)

**6.1 Authority** - This Section is adopted pursuant to the provisions of RSA 674:21, **Innovative Land Use Controls**. The Planning Board shall administer the application, review, and approval process for Open Space Developments through the subdivision of land process. The Planning Board is further authorized to adopt amendments to the Subdivision Regulations in order to further administer the requirements of this section.

**6.2 Purpose and Objectives** The purpose of the Open Space Subdivision design is to conserve agricultural and forestlands, habitat, water quality, and rural character that would likely be lost through conventional development approaches. Open Space Developments shall promote the following objectives:

1. Maintain the special elements of rural character of the town through the preservation of natural resources and open space.
2. Minimize site disturbance and erosion through retention of existing vegetation and avoiding development in sensitive areas.
3. Encourage the use of land in accordance with its character and adaptability, including view sheds, assuring the permanent preservation of open space, agricultural lands, forest land and other natural resources; allowing innovation and greater flexibility in the design of residential developments while facilitating the coordination of design and use between adjacent properties.
4. Encourage a less sprawling form of development, thus preserving Open Space as undeveloped land.
5. Conserve and maintain historic settings, cellar holes, stone walls, archeological sites and structures that serve as significant visible reminders of the town's history.
6. Provide greater efficiency in the siting of services and infrastructure by reducing road length and width and utility runs.
7. Minimize runoff by reducing the land area covered by impervious surfaces. This process is meant to provide applicants with an alternative development approach intended to promote creativity and innovation in land planning. Within this context,

these regulations that are established are intended to be a minimum consideration of allowable impacts. Each tract of land possesses different, unique development characteristics and limitations, and the Open Space development use allowed on any particular tract will be a function of innovative subdivision design interacting with the special characteristics and limitations of the site.

### **6.3 General Provisions**

1. Applicability – Any lot as it existed on March 9, 2005, the date this section went into affect, is considered the Parent Lot. While a Parent Lot may be subdivided, no lot twenty (20) acres or larger shall be subdivided in a manner that would allow it to become exempt from the mandatory use of Open Space Development.
2. Mandatory Use of the Open Space Development - Any subdivision that creates additional developable lots, must use an Open Space Design if the Parent Lot size is twenty (20) acres or larger, unless (a) the completed subdivision of the Parent Lot will have a total of no more than four (4) lots, (b) all lots in the completed subdivision of the Parent Lot will have a minimum of ten (10) acres in size, or (c) following the submission of the yield plan required in Section 6.5.2 and an open space development subdivision plan, in the sole discretion of the Planning Board the proposed subdivision would result in fewer lots than allowable both under application of this Section 6. and the conventional Subdivision Regulations and would better accomplish the purposes set forth in Section 6.2.
3. Phased Subdivision Applications. This Open Space Subdivision ordinance shall apply to the phased subdivision of a parent lot over a period of time through separate successive applications. The density and design requirements of this Article shall apply to phased applications for the original parcel as though the development of the entire parcel were proposed in one application at one time. The total permitted density permitted will be based upon the acreage and characteristics of the original parcel that existed as of the date of enactment of this Section.

### **6.4 Density**

1. The intent of this section is to enable the applicant to decrease lot sizes and leave the land “saved” by doing so as open space, thereby lowering development costs, and increasing the desirability of the project.

2. The buildable area of the site shall not include slopes of 25% or more, submerged areas, utility right-of-ways, land set aside for open space conservation purposes, wetlands and their buffers, and the land within the minimum setbacks from the reference line in the Shoreland Protection district.
3. The maximum number of building lots proposed in an Open Space Subdivision shall not exceed the number of building lots otherwise permitted by conventional lot sizes for the zoning district in which the parcel is located.
4. Except for land located within the Shoreland Protection District, the Planning Board may approve a density bonus that increases the number of buildable lots available under conventional subdivision by 10%, rounded to the nearest whole number, for the provision of exceptional public benefits, namely conserving 60% or more of the buildable land as open space and providing public access to trails or dedicated conservation areas.

**6.5 Subdivision Approval:** An open Space Development requires compliance with the Planning Board’s subdivision regulations and the following additional requirements:

1. **Site Analysis** – The applicant shall submit a site analysis plan that shows the physical features and character of the site and the surrounding area
2. **Density Determination** – The applicant shall submit a yield plan showing that the net density will be no greater than permitted within that zoning district for a conventional subdivision or development, unless waived by the Planning Boardii upon a finding that the proposed number of dwelling units is well within the density requirement.
  - a. The yield plan is meant to be conceptual in nature but must be realistic and not show potential house sites or streets in areas that would not ordinarily be legally permitted in a conventional layout.
  - b. In addition to the above, the yield plan shall include, basic topography, wetlands, floodplains, steep slopes (greater than 25%), soils subject to slumping, and contiguous non-wet areas, and other areas of land where it is not feasible to accommodate building sites and individual septic systems.

- c. In order to show that the yield plan is reasonably achievable, 20% of the lots, randomly distributed throughout the yield plan, shall indicate one test pit which complies with all local, state, and federal requirements, including but not limited to, depth to estimated seasonal high water table, setbacks to lot lines and structures, and wetland setbacks. These lots shall be selected by the applicant, however, the Planning Board, at its discretion, may seek additional lots for testing if doubts arise.
- d. The yield plan shall comply with conventional subdivision standards and shall not require a variance or waiver from the existing ordinances or regulations in order to achieve the layout supporting the proposed density.

## **6.6 Dimensional Requirements**

1. **Minimum Lot Size:** may be reduced from required size for district to a size that is compliant with soil based lot sizing as defined in "Soil Based Lot Sizing Environmental Planning for Onsite Wastewater Treatment in New Hampshire" (SSSNNE Special Publication No. 4 Version I), as prepared by the Society of Soil Scientists of Northern New England, as amended.
2. Each Lot must have a minimum of 20,000 square feet of contiguous dry land. All contiguous areas shall be a minimum of 50 feet in width in order to be considered contiguous.
3. **Road Frontage** on roads constructed after the adoption of this section may be reduced from required size for this district to 75 feet.

## **6.7 Open Space**

1. **Open Space Requirements.** The total area of dedicated open space shall equal a percentage of 50% of the total buildable area.
2. **Permanent Restriction of Open Space.** Open space land shall not be further subdivided or used other than for recreation, conservation, forestry or agricultural purposes, except for easements for utilities, as approved by the Planning Board.
3. **Ownership and Protection of Conservation Areas** – The portion of the land designated as Open Space shall be



permanently protected with a conservation easement held by the Town of Deering, the State of New Hampshire, or a Non-Profit organization that is exempt from tax under Section 501 (c)(3), or similar provision of the Internal Revenue Code, and one of whose purposes is the conservation of open space and has the financial and organizational means for perpetual stewardship that is consistent with the purposes and objectives of this section or permanently protected by conveying the land to any of the above.

## **SECTION 7: SIGNS<sup>16</sup>**

**7.1 General Provisions:** Signs shall be permitted as designated below or in other sections of this Ordinance, but all signs shall be subject to the following regulations:

- a) Official town, state or federal signs shall be exempt from these regulations.
- b) No sign shall be placed in a manner that will endanger traffic by obscuring the view, by confusion with official signs, by glare or by flashing light, or by any other means.
- c) No sign using flashing electric lights shall be permitted in any district.
- d) A permit for each sign over six square feet, conforming to other specifications of this section, must be secured from the building inspector.
- e) Temporary signs, such as barn and yard sales, political signs, For Sale signs, and auction signs will not require a permit if under six square feet in size and posted for a period not to exceed one hundred and twenty (120) days.

**7.2** Two-faced signs shall be considered as a single unit, and only one surface shall be considered in determining the area.

**7.3** On-premise advertising signs for businesses shall be limited to no more than 20 square feet in size and may be illuminated only by non-colored, non-flashing lights. Illumination of advertising signs shall be permitted only during hours of actual business operation. Maximum height at highest point shall not exceed 15 feet. Locations may not be within any right-of-way nor within 150 feet of any intersection unless attached to a building, not closer than 15 feet from improved road edge, and shall conform to the side setbacks in section 5.2.3 b. (Amended March 8, 1988)

**7.4** Off-premise signs may only be erected with the written permission of the Board of Selectmen.

## **SECTION 8: BUILDING CODE<sup>17</sup>** (Adopted March 8, 2005)

**8.1 Building Permits.** Any person, firm or corporation shall obtain a building permit before commencing work on the erection or expansion of any building or structure. For One and Two Family Dwellings, the Town of Deering has adopted by reference and follows the 2003 International Residential Code. For structures other than One and Two Family Dwellings the Town of Deering shall enforce the current provisions of the State Building Code as promulgated pursuant to RSA 155-A:1, as may be amended from time to time.

**8.2 Adoption of Building Code and Enforcement of State Building Code -- Adoption of 2003 International Residential Code for One and Two Family Dwellings.** That a certain document, three (3) copies of which are on file in the Selectmen's Office of the Town of Deering, New Hampshire, being marked and designated as the 2003 International Residential Code for One and Two Family Dwellings, including Appendix Chapters A, B, C, E, F, G, H, J, and L, as published by the International Code Council, Inc., be and is hereby adopted as the Residential Building Code for the Town of Deering, New Hampshire, for regulating and governing the construction and enlargement of detached one and two family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with separate means of egress as herein provided; and each and all of the regulations, provisions, penalties, conditions and terms of said Residential Building Code are hereby referred to, adopted, and made a part hereof, as if fully set out in this section, with the additions, insertions, deletions and changes, if any, prescribed in Section 8.3 of this section.

**8.3 The following sections of the 2003 International Residential Code are hereby revised:**

**§R 101.1** Insert: Town of Deering

**§R 103.1** Insert: The Office of the Building Inspector is hereby created and the official in charge thereof shall be known as the Building Official.

**§R103.2** Insert. The Building Official shall be appointed by the Deering Board of Selectmen.

**§R 112.1** Insert. Appeals of orders, decision or determinations made by the Building Official relative to the application and interpretation of this Code, shall be made to the Deering Zoning

Board of Adjustment, who shall act as the Building Code Board of Appeals as provided in RSA 673:1(V). The Board of Adjustment shall have such authority as provided by RSA 674:34. The Building Official shall be an ex-officio member of said Board, but shall have no vote on any matter before the Board of Adjustment. The Board of Adjustment shall adopt Rules of Procedure for conducting its business and shall render all decisions and findings in writing to the Appellant with duplicate copy to the Building Official.

**§R 112.2.1:** The section entitled Determination of substantial improvement in areas prone to flooding is deleted in its entirety.

**§R 112.2.2:** The section entitled Criteria for issuance of variance of areas prone to flooding is deleted in its entirety.

**§P 3103.1:** Refer to the International Plumbing Code 2000 of the State Building Code.

**8.4 Enforcement of State Building Code.** Pursuant to RSA 674:51 (I), the Town of Deering hereby declares it will enforce the State Building Code. For structures other than one and two family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height, the Town of Deering will enforce the current provisions of the State Building Code as promulgated pursuant to RSA 155-A:1, as may be amended from time to time.

**8.5 Building Permit Fees.** Upon recommendation from the Building Official, the Board of Selectmen shall establish a schedule of fees for building permits, inspections and certificates of occupancy. The Selectmen shall follow the procedures provided in RSA 41:9-a (IV) in adopting any such fee schedule.

**8.6 Effective Date.** The Residential Building Code shall take effect upon the date of adoption, March 8, 2005.

**SECTION 9: GROWTH MANAGEMENT ORDINANCE**<sup>18</sup> (Enacted March 14, 2006)

**9.1 Authority**

This section of the Zoning Ordinance is enacted in accordance with RSAs 674:21 and 674:22.

**9.2 Purpose** -- The purposes of this section are as follows:

1. Promote public health, safety, convenience, welfare and prosperity;
2. Ensure that Deering does not receive more than its fair share of regional population growth;
3. Manage orderly growth in Deering in coordination with the Master Plan and Capital Improvements Program.
4. Ensure that adequate and appropriate facilities are available to individuals who may come to be located in Deering, and allow the Town the opportunity to absorb increases to Town services in an orderly manner.
5. Provide a temporary mechanism when municipal services are strained or overloaded to reduce the rate of residential growth and thereby allow the Town time to correct any deficiencies that have developed.

**9.3 Findings** -- The town hereby finds that:

**9.3.1** According to the U.S. Census, Deering's population grew from 1,707 in 1990 to 1,875 in 2,000, an increase of 168 people or slightly less than 1% per year (.9%) in the last decade. Since 2000, Deering's estimated population, (NH Office of Energy and Planning) has grown to 2,010, which is an annual rate of increase double that of the last decade, or slightly less than 2% (1.9%) per year. If this same rate of increase were to continue, over the next four years the town's growth would be 3.6% per year, or an increase of 289 or 14.4%, for a population of 2,299 by 2008.

**9.3.2** In 2004 Deering had an increase in building permits from 17 in 2003 to 30. This is a 78% increase in permits over the 2003 level. Assuming conservatively that the building permit rate does not increase above the 2004 level rate, but remains 30 each year and each permit

represents a household of approximately 2.3 persons, this would mean an increase over the next four years of 120 buildings, or a population increase of 276 persons. The increase through 2011 would be 483, or 24% above the present population.

**9.3.3** The Planning Board adopted an update to the Deering Master Plan in December 2004. As noted in the document, the overall Existing and Future Land Use Goal is to “maintain Deering’s rural character and protect areas of special value to the Town while providing for population growth in ways compatible with other goals of this Master Plan.”

**9.3.4** Following a recommendation contained in the 2004 Master Plan, the Planning Board adopted the 2006-2011 Deering Capital Improvements Program (CIP) on December 14, 2005. The CIP examines tax rates, past municipal expenditure trends, and presents a detailed proposed schedule of capital expenditure over the next six years for use by the Budget Advisory Committee, Board of Selectmen, and all citizens of Deering.

**9.3.5** The CIP outlined capital needs for the Police Department, Fire/Rescue Department, Emergency Management, Highway Department, Planning Board, Board of Selectmen, and Cemetery Committee. The projected impact of capital needs on the municipal portion of the tax rate ranges from \$2.05 to \$2.61 per thousand over the six-year period

**9.3.6** The 2004 full value tax rate for the Town of Deering was \$18.63 per thousand. This rate was higher than the average full value tax rate (\$18.01) of the six communities that directly abut Deering. Abutting communities are Antrim, Bennington, Frankestown, Henniker, Hillsborough, and Weare.

**9.3.7** The Hillsborough Deering Cooperative School District (SAU #34) Long-Range Facilities Master Plan has identified a number of potential options for future facilities improvements, including a possible addition to H-D Elementary School or a new PK-2 school in Hillsborough or Deering. Future growth rates in Deering will be an important element in future decision making by the SAU.

**9.3.8** Deering has many large undeveloped areas of residentially zoned land that if developed could put sizeable pressure on Town facilities, services and overall quality of life. Large developments could put an immediate strain on the Town’s infrastructure.

## **9.4 Administration**

**9.4.1** Data: The baseline data for developing housing unit counts in Deering and the six abutting communities is the 2000 U.S. Census Summary Tape File 1. Building permits issued by each community are to be used in the Planning Board's annual reporting as described in section 9.4.2 below.

**9.4.2** Annual Reporting: The operation of this section shall be reviewed by the Planning Board at its first regular February meeting each year to insure that the annual maximum growth rate has not become inconsistent with Deering's responsibility and capability of planning, developing, and implementing the necessary municipal systems and facilities to serve the growing town and to insure that Deering is assuming its fair share of housing growth.

**9.4.3** In addition, the Planning Board at its first regular December meeting each year and thereafter as the Board deems beneficial or necessary, will report on the number of building permits issued for the previous calendar year for all residential dwelling units in Deering and the six abutting communities. In addition, the Planning Board will report on the overall annual average percent increase in residential dwelling units (based upon building permits issued) for the six abutting communities, as well as Deering, for the previous calendar year. The Planning Board shall also prepare the analysis of building permit data as required in Section 9.5.1. All reports prepared by the Planning Board relative to growth management shall remain on file at the Town Office for as long as the reports are in effect.

## **9.5 Equitable Allocation of Available Building Permits**

**9.5.1** The number of building permits available for the calendar year for the Town of Deering shall be determined by calculating the previous five year average percent increase in building permits in the six towns abutting the Town of Deering and calculating the previous five year average percent increase in building permits for the Town of Deering. These two five year averages shall be combined and divided by two, thus producing a combined weighted five year average for Deering and the surrounding six towns. The resultant weighted five year average shall be multiplied by the Town of Deering's housing unit base at the conclusion of the immediate past calendar year and shall be rounded up to the next whole unit to determine the number of available for the calendar year for the Town of Deering

**9.5.2** To ensure equitable distribution of available permits, no individual, partnership, corporation, or other entity or its related or affiliated entities, or in the case of individuals, their relatives or persons associated with them in business, may receive more than twenty (20) percent of the permits, or permits for seven units, whichever is less, available during any given calendar year.

**9.5.3** In order to be complete, building permit applications must be for lots approved by the Deering Planning Board and recorded in the Hillsborough County Registry of Deeds. Lots must meet all applicable state and local regulations.

**9.5.4** Twenty five (25) percent of the available permits shall be reserved for owners of single lots, which are not part of a subdivision of three lots or more, and are not created within one (1) year from the date of the building permit application.

**9.5.5** Permits issued shall lapse and be returned to the pool of available permits if substantial construction on the dwelling has not begun within one (1) year. Site preparation work shall not be considered construction.

**9.5.6** In the event that more permits are requested than are available, the earlier application shall prevail based upon the date and time of receipt of the completed application at the Town office. The Building Inspector may maintain a waiting list in the event that another permit becomes available during that calendar year, or it can apply to the next calendar year.

**9.5.7** In the event that any available permits for the year are not issued, they shall be carried forward and applied to the following year's quota. No more than two year's building permits shall be issued in any given calendar year.

**9.5.8** Transferability: A residential building permit approved under this section shall be valid only for the site specified on the permit application. Should the property be conveyed, the permit shall be transferred to the new owner, but the expiration date shall remain unchanged, so long as the number of dwelling units remains the same.

**9.5.9** Application: This section applies to building permits for new residential dwelling units, as well as repair, replacement, reconstruction, or alteration of any existing seasonal dwelling units if the proposed work results in year-round residency in the unit. This



section does not apply to non-residential building permits or permits for expansion or the alteration of existing year-round structures.

**9.6 Subdivision Phasing** --The intent of this section is to ensure that each developer will be assured a number of permits that is appropriate to the size of his/her subdivision and investment, within the overall number of available permits.

**Table 9.1: Phasing Schedule by Subdivision Size**

<b>Number of new building lots</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
Less than 5	2	2	-	-	-
5 – 9	3	3	3	-	-
10 – 16	4	4	4	4	-
16 +	5	5	5	5	5

Notes: Table 9.1 shows the number of building permits available for various size subdivisions following Deering Planning Board approval. Year 1 denotes the year in which the subdivision was approved by the Planning Board. If there is no dwelling on the original pre-existing undeveloped buildable lot (parent lot), then an additional building permit is available the first year. The example provided for a subdivision of “less than 5” lots is for a 4-lot subdivision. Other examples provided are for the maximum size subdivision in each category (9 and 16 lots, respectively) so as to illustrate the full build out period for subdivisions in each size range. A 25-lot subdivision is illustrated for the “16+” category. If more than 25 lots are involved, either a maximum of five or the remaining number of permits, whichever is less, are available in subsequent years until the total number of permits available in the subdivision are issued.

**9.7 Exceptions**

**9.7.1** Proposals for senior housing may be excluded from this Section upon a finding by the Planning Board that the proposed project does provide such housing.

**9.7.2** In the event of damage, destruction, or demolition of any dwelling, the dwelling may be rebuilt, provided that construction is started within one year of its damage, destruction, or demolition and completed within two years.

**9.7.3** In each December, the Planning Board shall review the number of permits issued to date during that calendar year, determine the number of available permits, and consider the issuance of additional permits (within the available permits) to applicants that had previously received their maximum number of permits as calculated in Sections 9.5 and 9.6.

## **SECTION 10: SEVERABILITY<sup>19</sup>**

If any provision of this Ordinance shall be held invalid, its invalidity shall not affect any other provisions of this Ordinance that can be given effect without the invalid provision, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

## **ARTICLE 11: ORDINANCE FOR LARGE WIND ENERGY SYSTEMS (LWES) <sup>20</sup> (Adopted March 8, 2016)**

### **A. PURPOSE**

The purpose of this Ordinance is to provide for the development and use of wind power as an alternative energy source in the Town of Deering, benefiting both the economy and the environment subject to reasonable restrictions that will:

1. Preserve and protect the public health, safety, and general welfare;
2. Preserve environmental, historic and scenic resources and wildlife;
3. Ensure that Large Wind Energy Systems are located, constructed and operated in a manner consistent with the Deering Master Plan;
4. Protect property values;
5. Protect individual residents and the environment from any adverse conditions caused by a LWES and from any potential injury or damage from hazards associated with the failure of LWES components and/or debris hazards;
6. Ensure the financial security necessary for the operation, decommissioning, and removal of these systems;
7. Ensure the compatibility of the LWES with other land uses within the Town;
8. Control Sound Pressure/Noise Levels; and
9. Prevent electromagnetic interference.

This ordinance provides a permitting process to ensure compliance with requirements and standards established therein.

This Ordinance is adopted pursuant to the enabling provisions of NH RSA 674:1,V, NH RSA 674:16 & 17, and NH RSA 674:21. In addition, pursuant to the provisions of NH RSA 674:43, the Planning Board is hereby granted the authority to require preliminary review of site plans, review and approve or disapprove site plans, and issue permits for the construction or operation of Large Wind Energy Systems, including

Meteorological Towers, in the Town of Deering, subject to the provisions of this Ordinance.

If there is a conflict between provisions in this Ordinance, or between its provisions and those in any other ordinance or regulation, the more stringent provision shall apply, except that the height limitations in this Article shall prevail with respect to all Large Wind Energy Systems.

## **B. DEFINITIONS**

The following terms shall have the meanings indicated:

“Adverse Noise Impacts” - Disturbances that interfere with: customary speech and communications both indoors and outdoors, telephone conversations, reading, tasks requiring concentration, listening to music or television, general health and sleep.

“Amplitude Modulation” - Wind turbine noise (measured in 125-millisecond intervals at any location 3.5 to 25 meters outside a dwelling) is defined as exhibiting amplitude modulation (also referred to by AM or impulsive) when and if the A-weighted sound pressure level rises or falls by more than 3 dB within any 2-second period more than five times in any 1-minute period with an average sound level of 28 dBA or more, six or more times in any hour.

“Applicant” - The person, firm, corporation, company, or other entity who applies for approval under this Section, as well as the Applicant’s successor(s), assign(s) and/or transferee(s) as to any approved LWES or testing facility, such as owner or operator of an approved LWES. An applicant must have the legal authority to represent and bind the landowner or lessee who will construct, own, and operate the LWES or testing facility. The duties and obligations regarding approval for any approved LWES or testing facility shall be with the owner of the LWES or testing facility, and jointly and severally with the owner and operator or lessee of the LWES or testing facility.

“Application” - An application for a LWES under this Section.

“Automatic Obstruction Lighting System” - A lighting system that provides continuous 360-degree surveillance of the airspace around a wind farm from the ground level to above aircraft flight altitudes, automatically activating obstruction lighting when aircraft are detected at a defined outer perimeter and course of travel.

"A-weighted (dBA)" -The unit of measure for the human response to noise using an electronic filter as specified by ANSI approximating the frequency response of the human ear from 20 Hz to 20 kHz.

"Background Sound Pressure/Noise Level" – The Sound Pressure/Noise Level represented without the wind turbines operating and when man-made and natural intrusive sounds are at a minimum. The intent of this definition is to exclude Sound Pressure/Noise Level contributions from intermittent noises such as traffic and emergency vehicles, and from seasonal natural sounds such as tree frogs and crickets that are not present year round.

"Blade Glint" - The intermittent reflection of the sun off the surface of the blades of a single Wind Turbine or multiple Turbines.

"CNR (Community Noise Response)" - United States Environmental Protection Agency methodology to predict the community noise reaction to a new sound source introduced into the environment. ("Information On Levels Of Environmental Noise Requisite To Protect Public Health And Welfare With An Adequate Margin of Safety, 550/9-74-004, March 1974" (Levels Document)).

"C-weighted (dBC)" - An electronic filter with a band-pass frequency response 20Hz to 20kHz.

"Daytime" - Hours from 7:00 AM to 7:00 PM.

"Debris Hazard" - Hazard owing to the possibility that the parts of a LWES, or material (ice or other debris) accumulated on its rotating elements, could be dislodged and fall or be thrown some distance onto surrounding property.

"Excessive Noise" - Any noise that causes a nuisance or disturbance or degrades health or well-being.

"FAA" - The Federal Aviation Administration.

"FERC" – Federal Energy Regulatory Commission

"Good Neighbor Agreement" – a negotiated agreement between a landowner and an applicant concerning environmental, health, sound, safety or other impact of a proposed LWES which may include agreement to forego rights to take legal or other steps to challenge such impact(s). *See also* "Participating Landowner."

"Health" - State of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

"Hertz (Hz)" - A unit of frequency equal to one cycle per second.

"Hub Height" - The distance to the center of the turbine hub as measured from ground level to the center of the Wind Turbine hub.

"Impact(s)" - Any effect on the environment, including sound and visual impacts such as changes in sound pressure, noise, and light in the environment.

"Impulsive Sound" - Single or multiple noise events lasting one second or less; measured with the un-weighted peak sound pressure level and "Impulse" (35msec) or "Fast" (125 msec) meter response.

"Infrasound" - Sound energy below 20 Hz.

"Large Wind Energy System (LWES)" - An electricity generating facility, with a generating capacity of over 100 kilowatts and less than 30 megawatts, consisting of one or more Wind Turbines, including any substations, Met towers, cables/wires and other buildings accessory to such facility.

"Ldn" - The day/night level is the 24 hour average of continuous "A-weighted" sound energy having a 10 decibel penalty added to the nighttime hours of 10 p.m. to 7 a.m.

"Leq" - The equivalent continuous sound level that has the same acoustic energy for a constant sound level as for a fluctuating or intermittent level in the same period of time.

"LOAEL" - The "Lowest Observed Adverse Effect Level"; 40 dBA, WHO 2009.

"Met Tower" - A meteorological tower used for the measurement of wind speed.

"Natural Environment" - Includes navigable waters, waters of a contiguous zone, ocean waters, and any other surface water, groundwater, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States, including wildlife, ecosystems and habitat, historical, cultural, recreational and archeological resources.

"Nighttime" - Hours from 7:00 PM to 7:00 AM.

"NOEL" - The "No Observed Effect Level"; 30 dBA, WHO 2009.

"Noise" - Unwanted or any sound that is not part of the natural environment.

"Noise Emitter" - Any man-made piece of LWES equipment that is audible beyond the property line of a Participating Landowner.

"Noise Level" - Energy-equivalent sound pressure level (Leq) over a minimum of a ten-minute interval.

"Non-Participating Landowner"- All landowners, not including those on whose property all or a portion of a Large Wind Energy System is located pursuant to an agreement with the Applicant.

"Octave Band" - A band of sound covering a range of frequencies such that the highest is twice the lowest, as defined in ANSI Standard S1.11.

"One-Third Octave Band" - A band of sound covering a range of frequencies such that the highest frequency is the cube root of two times the lowest, as defined in ANSI Standard S1.11.

"Participating Landowner"- Any landowner on whose property all or a portion of a Large Wind Energy System is located pursuant to an agreement with the Applicant.

"Permit to Construct" - After the application has been approved by the Planning Board, the Deering Board of Selectmen shall issue a Permit to construct the project

"Permit to Operate" - A written approval issued by the Deering Board of Selectmen and the Planning Board to operate a LWES once construction of such project has been approved by the Planning Board.

"Project Boundary" - A continuous line, which encompasses all Wind Turbines and related equipment to be used in association with a Large Wind Energy System.

"Public Infrastructure" - Roadways, culverts, and bridges maintained by the Town of Deering or State of New Hampshire

"Pure Tone" - Sinusoidal sound energy for a single frequency or pitch.

“Setback” – The distance a LWES tower base is set back from abutting property lines, structures, or other features

“Shadow Flicker” - The effect when the blades of an operating wind turbine pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his/her immediate environment.

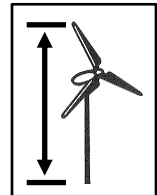
“SODAR” - A meteorological instrument used to measure the wind speed profile at various heights above the ground, and the atmospheric thermodynamic (lower layer) structure (Sonic Detection And Ranging)

“Sound Level” - The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in ANSI specifications for sound level meters (ANSI SI.4-1971, or the latest revision).

“Sound Power Level” -  $L_w$ . Ten times the logarithm to the base ten of the ratio of the sound power radiated by the source to a reference sound power, expressed in decibels (dB). The reference sound power is 1 picowatt (pW).

“Sound Pressure Level” -  $L_p$ . Twenty times the logarithm to the base ten of the ratio of a given sound pressure to a reference sound pressure of 20 microPascals (uPa), expressed in decibels (dB).

“Total Height” - When referring to a Wind Turbine, the distance measured from ground level to the blade extended at its highest point.



“Tower Shadowing” - The outline created on the surrounding area by the sun shining on a Wind Turbine.

“Un-weighted (dBL)” - A sound pressure level obtained without a weighting filter.

“Useful Life” - The LWES or individual Wind Turbine(s) will be presumed to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months.

“Visual Clutter” - The accumulation of diverse built elements on a site, especially elements that contrast with their surroundings in form, color, texture, or pattern.



“Welfare” - A state of well-being.

“Well-being” - A good or satisfactory condition of existence; a state characterized by health, happiness, and prosperity.

“Wind Shear” - The difference in atmospheric wind speed and direction occurring over relatively small increases in altitude (wind gradient).

“Wind Turbine” - A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, including the turbine, blade, tower, base and pad transformer, if any.

### **C. LARGE WIND ENERGY SYSTEM REQUIREMENTS**

The following standards shall apply to all LWES:

1. Design, Manufacture, Construction, and Maintenance Standards.
  - a. In order to minimize Visual Clutter, Wind Turbines shall use tubular towers of similar design, size, operation, and appearance throughout the project, which shall be painted a non-reflective, non-obtrusive color. Blades shall be coated or otherwise designed with a material to minimize Blade Glint.
  - b. At LWES sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening, and landscaping that will blend with the existing natural setting and environment.
  - c. Wind Turbines shall not be used for displaying any signs or advertising except for signs at ground level for reasonable identification of the manufacturer, owner, or operator of the LWES, the utility procuring the power, emergency contact information, and appropriate warnings as required by national, state, and local laws. Such identification shall not be illuminated. All signage shall meet Deering's Zoning ordinance requirements. Any graffiti on LWES structures shall be removed as soon as practical.
  - d. Control wiring and power lines shall be wireless or below-ground except where collector wiring is brought together for connection to the transmission or distribution network adjacent to that network. The Planning Board may permit above-ground wiring, if in the opinion of the Planning Board,

its impact, including but not limited to environmental and visual impacts, is less than the impact of below-ground wiring.

- e. The Applicant of an LWES shall not undertake any blasting without specific approval of such blasting during Site Plan Review. Terms and conditions for the blasting, including any necessary notifications, shall be specified during Site Plan Review.
  - i. The Applicant shall prepare an inventory of all structures, wells, bridges, and other seismically sensitive structures that could potentially be damaged by blasting.
  - ii. Before each blasting event, the Applicant shall notify all Participating and Non-Participating Landowners whose property can be potentially damaged of the time and date of the event. The Applicant shall receive signature verification of such notice.
  - iii. Flying rock traveling in the air or along the ground is not permitted to cross into the property of Non-Participating Landowner(s).
  - iv. A blasting log for each blast shall be kept on site at the LWES office for not less than five (5) years, and copies of the required blasting log shall be promptly submitted to the Planning Board upon completion of construction of the LWES.
  - v. Pre-blasting and post-blasting inspection and documentation may be required by the Planning Board.
- f. If at any time during construction, operation, or maintenance of the LWES, the Applicant wishes to modify the approved Site Plan, the Applicant shall submit to the Planning Board an Amended Site Plan for review and approval.
- g. Construction and maintenance activities shall be organized and timed to minimize Impacts on residents and wildlife from noise, disruption (including disruption of wildlife habitat), and the presence of vehicles and people. Construction and maintenance, unless there is an imminent threat to life or

property, shall be performed only on weekdays between the hours of 7 AM and 6 PM. The Planning Board has the authority to waive this requirement if, in its opinion, there is good reason to do so.

- h. Any construction equipment or parts (used or unused) kept on site shall be stored indoors except during periods of construction, maintenance, and repair.

## 2. Height.

- a. Due consideration shall be given to the scale of the turbines in relation to the surrounding landscape. In any case, the total height of the Wind Turbines shall not exceed 450 feet.
- b. Met Towers must be less than 200 feet in height, and must be designed so as not to require lighting in compliance with FAA regulations. Guy wires are allowed on Met Towers, but must be designed so as to limit environmental hazards to wildlife, especially birds and bats.
- c. Height shall be measured from normal ground elevation without increases due to site (grade) modification.

## 3. Setbacks

- a. All LWES tower bases must be sited so as to be set back from adjacent property lines by at least two thousand (2,000) feet. An exception **may** be made to this requirement in the case of a Participating Landowner who waives his or her rights under this Ordinance; such waiver shall exclude the ability of the owner of that property to have or build any structures within 2,000 feet of the closest LWES tower and shall be recorded in the Hillsborough County Registry of Deeds. In no case shall the Setback be less than 1.5 times the maximum height of the Wind Turbine from the nearest property line or from areas such as roads, trails, or other areas accessible by the public.
- b. Additional Setbacks may be required to meet noise standards and safety requirements for public rights of way.
- c. The applicant shall submit a plan of the required Setback for each hazard as a circle for a single tower or as a series of connected arcs for multiple towers centered on each turbine

and submitted with the required Setback graphically superimposed to scale on town maps identifying lot owners, structures, and lot property lines.

#### 4. Communications Interference.

- a. Any LWES shall be sited and operated so that it does not interfere with television, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception to neighboring areas. The Applicant shall provide certification from a NH licensed Professional Engineer confirming that the proposed project will not interfere with television, telephone (including cellular and digital), microwave, satellite (dish), navigational, or radio reception to neighboring areas. The Applicant shall be responsible for the full cost of any remediation necessary to provide equivalent alternate service or to correct any problems.
- b. Remedies may include relocation or removal of the LWES. The Applicant of the LWES shall respond within five business days to any request for a communications interference investigation by a property owner within the Project Boundary and a three-mile radius beyond the Project Boundary. Testing at Applicant's expense by a NH licensed Professional Engineer selected by the Planning Board shall commence within ten working days of the request. The Applicant is responsible for mitigating within ten working days from determination of interference cause attributed to the operation of the LWES. Mitigation shall be determined by another test by the same Professional Engineer.

#### 5. Sound Pressure/Noise Level Limits and Measurement.

The intent of this section is to preserve the quiet rural environment of Deering and to provide protection from Excessive Sound Pressure/Noise Levels that cause adverse Impacts to public Health, Welfare, and Well-being. The existing Background Sound Pressure/Noise Levels in Deering are less than 30 dBA. Annoyance due to Noise, as measured by community surveys, is the consequence of activity interference. Sound Pressure/Noise Level limits are based on the recommended guidelines found in the United States Environmental Protection Agency's document *Information On Levels Of Environmental Noise Requisite To Protect Public Health And Welfare With An Adequate Margin of Safety*,

550/9-74-004, March 1974 and include levels requisite to protect against activity interference. These Sound Pressure/Noise Level limits are consistent with the World Health Organization (WHO) night-noise guidelines for exposure to noise during sleep, found in the following documents: *Night Noise Guidelines (NNLG) For Europe, 2007* and *ISBN 978 92 890 4173 7, 2009*.

- a. Sound Pressure/Noise Levels produced by the LWES, measured using the standards and procedures set forth in this ordinance in this Section C.; Section E. MONITORING AND ONGOING REQUIREMENTS, paragraph 7.; and Section J APPLICATION PROCEDURE AND REQUIREMENTS, paragraph 4.i., shall not exceed 33 dBA (Leq 10 minute) anywhere at any time on a Non-Participating Landowner's property.
- b. The Planning Board may impose greater noise constraints if it deems such constraints are necessary to protect the public health, safety, and welfare of the community.
- c. Any model used to predict Wind Turbine Noise shall be conducted in accordance with ISO 9613-2 1996-12-15 standards and specifications and use the following parameters:
  - i. Each Wind Turbine shall be considered as an individual and unique noise emitter.
  - ii. The prediction model shall use the Manufacturer's highest sound-power levels, as measured using standard IEC 61400-11 (edition 3.0, 2012-11), or most current edition), which shall be submitted in 1/3 octave band for frequencies 31.5 to 8000 Hz. Test reports performed for the same model(s) proposed for the LWES shall be submitted in full.
  - iii. The prediction model shall use a Wind Shear (wind profile power law exponent, alpha) of no less than 0.50, where Wind Shear is defined as the difference in atmospheric wind speed and direction occurring over relatively small increases in altitude.
  - iv. There shall be no attenuation (zero) for ground cover, since a Wind Turbine is an elevated noise emitter.

- v. There shall be no attenuation (zero) for foliage, since trees have no leaves from November to April.
- vi. Add a plus-5-dB design margin to the predicted Sound Pressure/Noise Levels to account for variations in atmospheric propagation due to refraction (the bending of sound waves in the atmosphere due to changes in air temperature or wind gradient).
- vii. Ground absorption values used in the modeling software shall be set to 0 for water and hard concrete or asphalt surfaces and 0.5 for all other surfaces.
- viii. Sound Study Methodology for Post-construction sound reports is described in Section E., paragraph 7., below.

#### 6. Shadow Flicker, Tower Shadowing, and Blade Glint.

- a. The facility shall be designed such that Shadow Flicker, Tower Shadowing, or Blade Glint falling on or in any Non-Participating Landowner's property or a public road shall be limited as follows:
  - i. The Shadow Flicker, Tower Shadowing or Blade Glint shall not exceed eight (8) hours per year in total at or within any residence, learning space, workplace, healthcare setting, public gathering area (outdoor and indoor), or other occupied building.
  - ii. The Shadow Flicker, Tower Shadowing or Blade Glint will fall more than 100 feet from an existing residence.
  - iii. The traffic volumes shall be fewer than 500 vehicles per day on the roadway.
  - iv. The Shadow Flicker, Tower Shadowing or Blade Glint shall not fall onto an intersection.
- b. Blades shall be coated or otherwise designed with a material to minimize Blade Glint.
- c. Within twelve months of the date when the project becomes fully operational, or at any time upon receipt of a verified complaint of Shadow Flicker, Tower Shadowing, and/or Blade

Glint, the Applicant shall submit to the Planning Board a Shadow Flicker, Tower Shadowing, and Blade Glint study certifying that Shadow Flicker, Tower Shadowing, or Blade Glint present no deleterious effects for any occupied structure located within a one-mile radius of any Wind Turbine. If Shadow Flicker and/or Blade Glint exceeds any of the conditions listed above, the source Wind Turbine(s) shall be shut down until the Shadow Flicker, Tower Shadowing, or Blade Glint problem is remedied

#### 7. Public Infrastructure.

The Applicant shall not adversely impact any Public Infrastructure occasioned by or in any manner related to the installation, operation, maintenance, and repair or decommissioning of the LWES. The Applicant shall provide documentation of written permission for any modifications or impacts to Public Infrastructure, including roadways and utilities, that may be required for the proposed LWES. This includes reimbursement to the Town or State for any repairs or reconstruction reasonably deemed necessary by the Town or State.

#### 8. Erosion and Storm Water Control.

During the Useful Life of the LWES, the Applicant shall maintain any erosion and storm-water control practices described in the Erosion and Storm-Water Control Plans and Life Cycle and Decommissioning Plans submitted with the Application for Review.

#### 9. Safety.

The applicant has the burden to establish that there is no unreasonable threat to public safety from ice throw, blade shear or tower collapse.

- a. Each Wind Turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. All Wind Turbines shall be equipped with redundant braking systems. This includes both aerodynamic (including variable pitch) over-speed controls and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode, whereby they are engaged in the case of loss of load on the generator. Stall regulation shall not be considered a sufficient braking system for over-speed

protection. A manual electrical and/or over-speed shutdown disconnect switch shall be provided and clearly labeled on/in the Wind Turbine structure.

- b. The blade tip of any Wind Turbine shall, at its lowest point, have ground clearance of not less than 75 feet.
- c. Any Wind Turbine and/or accessory structure shall not be climbable up to above 15 feet above ground level.
- d. The LWES shall be designed to prevent unauthorized access to electrical and mechanical components and shall have access doors that are kept securely locked at all times when service personnel are not present.
- e. Appropriate warning and safety signage shall be placed on any Wind Turbine, accessory structure, and/or electrical equipment, and posted at all LWES entrances.
- f. All structures shall be self-supporting. No guy-wire-supported structures shall be permitted, with the exception of Met Towers.
- g. A sign bearing emergency contact information shall be posted near the tower(s) or operations and maintenance office building.
- h. Signage shall be placed at the road access to warn visitors about the potential danger of falling and thrown ice and the Debris Hazards.
- i. Any Wind Turbine that is found to present an imminent physical threat of danger to human life, wildlife, or property, or that is found to exceed the noise standards of this Ordinance, shall be immediately shut down. Following repair or redesign to eliminate the physical threat of danger or to comply with the noise standards of this Ordinance, the Wind Turbine shall be certified to be safe and to comply with this Ordinance by a NH licensed Professional Engineer prior to resumption of operation.

#### 10. Rescue, Fire, and Hazard Protection.

The Applicant shall ensure the LWES complies with the following



fire- control and -prevention measures and requirements:

- a. The Applicant shall prepare, maintain and comply with a plan acceptable to and approved by the Deering Fire Chief to provide for fire-fighting and rescue services, including water accessibility, any necessary equipment, and/or training for local fire protection and rescue personnel. The plan shall be prepared and updated annually as required to comply with the Fire Code. The full cost of implementing and maintaining the plan, including incremental equipment, ongoing equipment maintenance, and staffing, shall be the responsibility of the Applicant.
- b. The Applicant shall comply with all laws applicable to the generation, storage, clean-up, transportation, and disposal of hazardous wastes generated during any phase of the project's life.
- c. All structures and activities shall comply with the National Fire Protection Association (NFPA) Fire Code, including but not limited to the following (as updated): NFPA 1, 10, 12, 72 and 101, as well as the Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations, NFPA 850.

## 11. Environmental Impact.

The Town of Deering is home to many sanctuaries, reservations and preserves for wildlife, including bats and birds, and for recreational use. Protection of these entities is an essential goal of the Deering Master Plan.

The Applicant shall address in the application any potential adverse impacts on these sanctuaries, reservations and preserves; describe the measures that will be taken to minimize, eliminate, or mitigate adverse impacts on the natural environment during the entire life cycle of the LWES; and shall comply with all Federal, State and local laws regulating environmental impacts. In making its determination under this section, the Planning Board shall consider the U.S. Fish and Wildlife Service "Wind Turbine Guidelines Advisory Committee Recommendations," dated March 4, 2010, or subsequent updates, the "Proposed Wind Power Siting Guidelines - May 29, 2007" (which was developed by the Wind Energy Facility Siting Guidelines Working Group and forwarded to the NH Energy

Policy Committee Wind Siting Subcommittee), and any recommendations of the New Hampshire Fish and Game Department, the Audubon Society, the Society for the Protection of New Hampshire Forests, the Piscataquog Land Conservancy and the Deering Conservation Commission.

- a. Environmentally Sensitive Areas. The plan for the LWES shall reflect the natural capabilities of the site to support development. Environmentally sensitive areas--including but not limited to wetlands, vernal pools, seeps or springs, steep slopes (greater than 15%), watersheds, floodplains, significant wildlife habitats, fisheries, habitat for rare or endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers--will be maintained and preserved to the maximum extent possible. The Applicant shall demonstrate appropriate measures for protecting these resources during the entire life cycle of the project.
- b. Wildlife. The Applicant shall demonstrate that the LWES will have no significant adverse Impact on area wildlife and wildlife habitat. Such analysis shall include but not be limited to adverse Impacts on birds, bats, raptors, animals, and habitat fragmentation. In addition, the Applicant must demonstrate that the LWES will have no undue adverse Impact on rare, threatened, or endangered wildlife. The wildlife and habitat analysis must include pre-construction field studies conducted by a qualified wildlife biologist selected by the Planning Board and paid for by the Applicant. Such studies shall span at least two consecutive migration cycles.
- c. Avian and Bat Species. Development and operation of a LWES shall have no adverse impact on bird or bat species and shall include the following:
  - i. All above-ground lines, transformers, or conductors should comply with the Avian Power Line Interaction Committee (APLIC, <http://www.aplic.org/>) published standards to prevent avian mortality.
  - ii. The design and installation of the LWES shall avoid, to the extent practicable, the creation of artificial habitat for raptors or raptor prey; e.g., electrical equipment

boxes on or near the ground that can provide shelter and warmth and horizontal perching opportunities on the towers or related structures and soils where weeds can occur.

- iii. In order to minimize the detrimental Impacts on bat and bird populations, all Wind Turbines shall be configured and or controlled so that the blades will not turn when wind velocity at hub height is less than 10 mph. In addition, there may be periods of time when the Wind Turbine operations must be curtailed to protect bats and raptors and other migratory birds.
  - iv. All reasonable mitigation measures known to be effective in reducing or avoiding impact on avian and bat species shall be implemented.
- d. Ground and Surface Water. The LWES will not adversely affect the quality or quantity of ground and surface waters. The Applicant shall demonstrate to the Planning Board's satisfaction that there are no unusual risks caused by the LWES. The Board shall require that spill prevention and control measures be installed, and that all activities involving potentially permeable pollutants, including at delivery and transfer points, be conducted under cover and over an impervious surface surrounded by dikes. Whenever sedimentation is caused by stripping vegetation or grading, it shall be the responsibility of the Applicant to remove it from all adjoining surfaces, drainage systems, and watercourses and to repair any damage as quickly as possible at the Applicant's expense.
- e. In addition to these requirements the LWES must meet the requirements of other Articles of the Town's Zoning Ordinance, including, but not limited to the Watershed Overlay, the Aquifer Protection, and the Shorefront Protection Articles.
- f. Historic, Cultural and Archaeological Features. Because the preservation of historic property and historic resources are very important to the Town of Deering (also see NH RSA 162-H and RSA 227-C), the Applicant shall be required to:
- i. Inventory and map all historically significant sites

located within two thousand (2000) feet of the proposed LWES project area, including stone walls, structures, roadways, and cellar holes.

- ii. Provide a plan outlining how the Applicant proposes to minimize the impact of construction and ongoing operation of the LWES on those sites.
- iii. As a condition of approving the Applicant's Historical, Cultural, Archaeological protection plan, the Planning Board may require specific setbacks of LWES structures or roadways from significant sites and/or other actions that protect or restore items of historic significance.

## 12. Visual Impact.

- a. An LWES shall be designed and located so as not to cause adverse visual Impacts, including Visual Clutter and Impacts caused by any lighting, and so as not to dominate views from residential areas, cultural resource areas including historic property and historic resources (see section 11 above), public recreational and scenic areas, trails used by the public, areas under conservation easement, open space within the Town, any public road right-of-way or any areas designated as protected viewsheds in the Deering Master Plan.
- b. Dominance is determined by how an LWES will be seen within its visual context and occurs when the project would cause a change in the balance or feel of the character of the surrounding area or create a very dominant focal point that detracts from other important natural or cultural focal points. (The Planning Board may use as a reference document *A Visual Impact Assessment Process for Wind Energy Projects*, Vissering, Sinclair, and Margolis, May 2011.) Some of the factors to be considered in evaluating the degree of dominance are:
  - i. appearance of proximity,
  - ii. duration of view,
  - iii. expectation for natural or intact landscape setting,
  - iv. uniqueness of a scenic resource,

- v. whether the view is directly ahead over extended distances, and
  - vi. whether large numbers of turbines are visible in many views
- c. All available mitigation techniques to reduce the visual impacts of the LWES shall be considered, methods prescribed by the American Landscape Institute. The use of Automatic Obstruction Lighting Systems, such as those manufactured by DeTect and OCAS, is mandatory for Wind Turbines with FAA lighting.
  - d. Area and security lighting shall be full cut-off and shall not in any case exceed 175 watts each and 25 feet in height and shall be shielded from Non-Participating Landowners' property.
  - e. The Planning Board may require additional mitigation measures to minimize the impact on scenic resources of the Town.

### 13. Financial, Technical, and Managerial Capability.

The applicant shall demonstrate to the Planning Board that it has adequate financial, technical, and managerial capability to assure construction, financing, operation, monitoring and decommissioning of the facility in continuing compliance with the terms and conditions of this Ordinance.

### 14. Decommissioning Plan

The applicant shall submit at its own expense a decommissioning plan acceptable to the Deering Planning Board prepared by an independent, New Hampshire licensed professional engineer with demonstrated knowledge and experience in wind generation projects and cost estimates, which plan shall provide for removal of all structures and restoration of the facility site with a description of sufficient and secure funding to implement the plan, which shall not account for the anticipated salvage value of facility components or materials, including the provision of financial assurance acceptable to the Planning Board in the form of cash, an irrevocable standby letter of credit, performance bond, certificate of deposit or surety bond. The contents of the plan are set forth in Section H, below.

## 15. Additional Conditions

The Planning Board may grant a LWES Site Plan approval subject to any condition that it deems necessary to minimize any burden on any person affected by granting the approval. Such conditions or exemptions may include but are not limited to restrictions on the location of the LWES and requirements for the compensation of persons affected by granting approval.

### **D. EASEMENTS AND LEASES**

Any Landowner may grant an easement to the Applicant for any Impacts of the LWES on their property. In order to be considered a Participating Landowner, the Applicant shall provide the existing and proposed easement terms for approval in order to ensure that the Participating Landowner agreement or easement ("easement") complies with the legal and other requirements of this Ordinance, including without limitation the following:

1. Each easement shall clearly advise all subsequent owners of the property that the standards permitted by this Article may be exceeded on the property, may run with the land and are enforceable against the property owner.
2. The terms of the easement shall be consistent with the current application for a LWES.
3. The full terms of any leases or easements shall be properly recorded with the Registry of Deeds in the chain of title for each property owned by a Participating Landowner. The Owner of the LWES shall be responsible to ensure that the easement is effective as to all subsequent owners.
4. All easements shall include consent of the landowner(s) to monitoring, inspections and access by the Town as required by the provisions of this Ordinance.
5. Setbacks required in Section C., paragraph 3. of this Article may not be waived.

### **E. MONITORING AND ONGOING REQUIREMENTS**

1. Monitoring and Inspections.

Upon reasonable notice, The Town of Deering or its designated representatives may enter a lot on which a LWES has been approved for the purpose of monitoring and inspections for compliance with the provisions of this Ordinance, the provision or specification of any application, plat, or plan approved by the Planning Board, or any requirement or condition of a permit or decision issued by the Planning Board. Except in cases of an emergency or similar circumstances, the Town will provide the Owner or Applicant with notice not less than 24 hours in writing, by telephone or by electronic mail, prior to such inspections.

2. Permit to Operate Required:

a. A Permit to Operate shall be required prior to commercial operation of a LWES. Following construction and before commencing operation, the Applicant shall apply for a Permit to Operate from the Planning Board, or its designee. The application for a Permit to Operate shall include the following:

- i. An inspection report prepared and signed by a NH licensed Professional Engineer certifying the structural and operational integrity of the LWES and completion of construction in accordance with all submitted and approved building, road, and lighting plans and any other plans required by the Planning Board;
- ii. A report certified by the Applicant demonstrating that the LWES has been constructed in compliance with the plans and conditions approved by the Planning Board and as required by this Ordinance;
- iii. A report certified by the Applicant demonstrating the Decommissioning Fund has been established and maintained in compliance with the plans and conditions approved by the Planning Board and as required by this Ordinance; and
- iv. A report certified by the Applicant demonstrating that the LWES has operated and will continue to operate in compliance with the plans and conditions approved by the Planning Board and as required by this Ordinance. All exceptions shall be identified and explained by the Applicant.

- v. All Monitoring and Ongoing studies and reports required by this Article or by the conditions of Planning Board approval shall be submitted for review by the Planning Board.
- b. The Planning Board shall hold a public hearing to consider the application for a Permit to Operate in accordance with the requirements of RSA 676:4 and the Planning Board's Site Plan Regulations and Procedural Rules. Reasonable fees in addition to fees for notice may be imposed by the Planning Board to cover its administrative expenses and costs of special investigative studies, review of documents and other matters which may be required as provided by RSA 676:4, I (g). The Planning Board shall consider the information contained in the application as well as any other relevant information presented by the Applicant or interested parties.
- c. The Planning Board shall approve an application and issue a Permit to Operate upon finding that the Applicant has satisfied each of the requirements set forth in Paragraph (a) above. A Permit to Operate shall be issued in writing and valid for a period of five (5) years. The Applicant shall be responsible for renewal of its Permit to Operate prior to its expiration.
- d. A Permit to Operate shall be denied, suspended or revoked if the Planning Board determines that the Applicant has failed to construct, operate or maintain the LWES in compliance with the plans and conditions approved by the Planning Board and as required by this Ordinance. Revocation of a Permit to Operate shall be in accordance with the provisions of RSA 676:4-a. Revocation shall not preclude enforcement or any other action.

### 3. Post-construction Water Quality Study:

- a. Within six (6) months of the first Wind Turbine becoming operational, and every twelve (12) months thereafter for a period of three (3) years, a water quality study of all wells, springs, and water resources specifically identified during the Site Plan Review shall be designed and carried out by a water quality professional approved by the Planning Board. The same procedures shall be followed as those followed in the



pre-construction notification and testing procedures specified in the Site Plan Review Regulations.

- b. Upon receipt of a substantiated complaint that the integrity or water quality of any well has been damaged by the LWES construction, the Planning Board may require prompt investigation of the complaint by a water quality professional approved by the Board.
- c. If degradation or contamination of any well, spring, or water resource is found to have occurred, the Applicant shall be considered in violation of this Article and subject to the provisions of the Enforcement Section of this Article.
- d. The Applicant is responsible for all costs associated with water quality testing and corrective action if necessary.

#### 4. Annual Power Production Report:

Applicant shall submit an annual power production report to the Planning Board. The power production report shall cover the preceding twelve (12) months, and shall be in the form prescribed by the Planning Board and shall include actual power production in kilowatt-hours for each Wind Turbine.

#### 5. Environmental Impact Studies:

- a. The Applicant shall submit to the Planning Board at least three (3) sets of post construction field studies conducted at periodic intervals within three (3) years after the LWES becomes fully operational, the first being within six (6) to twelve (12) months of the first Wind Turbine becoming operational. Additional studies shall be provided at every three-year interval or more often if determined necessary by the Planning Board. The studies shall be conducted by a qualified wildlife biologist approved by the Planning Board and paid for by the Applicant.
- b. If the post-construction field studies demonstrate substantive harm to the Natural Environment, the Applicant shall develop an appropriate mitigation plan acceptable to the Planning Board. The Applicant shall be responsible for the full cost of implementing the mitigation plan.

- c. In addition, the Applicant shall submit a quarterly report prepared and verified by an independent outside expert approved by the Planning Board to the Planning Board identifying all dead birds and bats found within 500 feet of the LWES. Reporting shall continue for at least three (3) years after the first Wind Turbine becomes operational, or longer if required by the Planning Board. In the event of an avian or bat mortality kill of threatened or endangered species, or discovery of more than 6 dead birds or bats of any variety on site, the Applicant shall notify the Planning Board and the New Hampshire Department of Fish and Game within 24 hours. Within 30 days of the occurrence, the Applicant shall submit a report to the Planning Board describing the cause of the occurrence and the steps taken to avoid future occurrences. During migration seasons the Planning Board reserves the right to require video surveillance as part of environmental impact studies.

#### 6. Decommissioning Costs.

Estimated total costs of decommissioning, prepared at the Applicant's expense by an independent New Hampshire licensed Professional Engineer as specified in Section C. 14 above, and as described in Section H shall be submitted to the Planning Board for its review every fifth year of operation and included in the Applicant's application for its Permit to Operate.

#### 7. Noise Compliance Report.

Within four (4) months of the first Wind Turbine becoming operational and again within two (2) months after all Wind Turbines have become operational and at anytime the Planning Board deems it necessary due to the number of complaints received, the Applicant shall submit to the Planning Board a noise compliance report certifying compliance with the plans and conditions approved by the Planning Board the requirements of this Ordinance related to LWES Sound Pressure and Noise Levels. The report shall be prepared by a professional acoustical engineer, approved by the Planning Board, who is a Full Member of the Institute of Noise Control Engineering (INCE). The report shall be signed or stamped by this person and shall comply with the following:

- a. Except as specifically noted otherwise, sound measurements shall be conducted in compliance with the latest version of

the American National Standards Institute (ANSI) Standard S12.18-1994 "Outdoor Measurements of Sound Pressure." Sound data shall be recorded with both dBA filtering and unfiltered down to 0.5HZ.

- b. Sound level meters and calibration equipment shall comply with the latest version of ANSI Standard S1.4 "Specifications for General Purpose Sound Level Meters," and shall have current calibration traceable to the National Institute of Standards and Testing (NIST) performed within the preceding 24 months.
- c. Noise measurements shall be taken at locations and times when the wind turbine is clearly audible and dominating the acoustical environment. All unattended measurements shall consider the wind turbine as dominating the acoustical environment.
- d. Noise measurements shall be taken with the turbines on and off to determine any Background Noise to be accounted for. The Applicant shall cooperate by shutting turbines off and turning them on during acoustic testing at times required by the acoustic monitoring personnel. Supervisory control and data acquisition system data shall be used to record wind speeds including hub height wind speed and turbine power output, shall be logged simultaneously with Sound Pressure Level and shall be reported to the Planning Board.
- e. The acoustic monitoring personnel shall determine if extraneous sounds such as insects, frogs or other sounds are contributing to the measured Leq noise level and remove their contributions either by relocating the measurement microphone to a spot not affected by such sounds or conducting testing at dates and times when such sounds are not present. The acoustic monitoring personnel may correct the Leq noise level using full or 1/3 octave band analysis to subtract Turbine Off levels from Turbine On levels, and by removing data in 1/3 octave bands from the Leq computation that are contaminated by extraneous sounds.
- f. The wind velocity at the sound measurement microphone shall not exceed 2 m/s (4.5 mph) during measurements of Background Noise, and the maximum wind speed at the microphone for noise measurements during turbine operation

should not exceed 4 m/s (9 mph).

- g. During Wind Turbine testing the atmospheric profile shall be Pasquill Stability Class E or F preferred, Class D as alternate. Wind Turbine acoustic testing shall be conducted with wind speeds varying between cut-in and cut-out speeds.
- h. The Wind Turbine shall be fully engaged blades-to-generator and running the standard power output program and producing the maximum power output for the incoming wind speed at Hub Height. Feathering or other blade angle manipulations that are not part of the normal Wind Turbine program to obtain maximum power output shall be prohibited during acoustic testing unless the Wind Turbine must be feathered due to a high wind condition for safety purposes, in which case the testing shall be rescheduled.
- i. Wind Turbine power output and wind speed data at Hub Height at 10-minute or shorter intervals shall be provided to the acoustic monitoring personnel by the Applicant for the entire sound measurement period.
- j. The wind velocity at the sound measurement microphone shall not exceed 2 m/s (4.5 mph) during measurements of Background Sound Pressure/Noise Level, and the maximum wind speed at the microphone for noise measurements during Wind Turbine operation shall not exceed 4 m/s (9 mph).

## **F. PUBLIC INQUIRIES AND COMPLAINTS**

The LWES Owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project, including the decommissioning phase. The Complaint Resolution Process submitted with the Application shall be used to resolve complaints. However, this Process shall not preclude the local government from acting on a complaint as provided by law.

1. Any individual, group of individuals or reasonably identifiable entity may file a signed and dated written complaint with the Owner of the LWES. If any complaints are received by phone, the Owner of the LWES shall inform the complainant that complaints must be submitted in writing. Any complaints received directly by the Board of Selectmen or the Planning Board shall be referred to the Owner of the LWES.

2. The Owner of the LWES shall report to the Planning Board all complaints received concerning any aspect of the LWES construction, operation, or decommissioning as follows:
  - a. Complaints received by the Owner of the LWES shall be reported to the Board of Selectmen or its designee within five (5) business days, except that complaints regarding unsafe or serious violations of this Article as defined in Section C of this Article shall be reported to the Planning Board or its designee the following business day.
  - b. The Owner of the LWES shall document each complaint by maintaining a record including at least the following information:
    - i. Name of the LWES and the Applicant
    - ii. Name of complainant, address, phone number
    - iii. A copy of the written complaint
    - iv. Specific property description (if applicable) affected by complaint
    - v. Nature of complaint (including weather conditions if germane)
    - vi. Name of person receiving complaint, date received
    - vii. Date reported to the Board of Selectmen or its designee
    - viii. Initial response, final resolution, and date of resolution
3. The Owner of the LWES shall maintain a chronological log of complaints received, summarizing the above information. A copy of this log, and a summary of the log by type of complaint, shall be sent on or before January 15, March 15, July 15, and October 15 to the Board of Selectmen, covering the previous calendar quarter. An annual summary shall accompany the January 15 submission.
4. The Board of Selectmen may designate a person to seek a complaint resolution that is acceptable to the complainant, the Board of Selectmen and the Owner of the LWES.

## **G. ENFORCEMENT AND PENALTIES**

The enforcement of this Ordinance shall be the responsibility of the Deering Board of Selectmen or its agent who is hereby authorized to cause any LWES, building, place, premises or activities to be inspected, and to order in writing the remedying of any condition found to exist in violation of this Ordinance, any provision or specification of any

application, plat, or plan approved by the Planning Board, or any requirement or condition of a permit or decision issued by the Planning Board.

#### **H. DECOMMISSIONING:**

1. The Applicant/Owner/Operator shall, at their expense, complete decommissioning (including site restoration) of the LWES, or individual Wind Turbine(s), within twelve (12) months after it is deemed unsafe, abandoned, or at the end of its useful life.

The LWES or individual turbines will be presumed to be at the end of their useful life if no electricity is generated for a continuous period of twelve (12) months unless after notice the applicant provides a reasonable basis to conclude that there is an expectation of continued operation.

2. Site Restoration shall include:
  - a. Removal and transportation off site of Wind Turbines including the blades, nacelles, and towers, power poles, buildings, cabling, electrical components including transformers and overhead power conductors , foundations and any other associated facilities to a depth of four (4) feet below the ground surface.
  - b. Removal from the property of all items in outdoor storage.
  - c. Road repair, if any, to pre-decommissioning conditions.
  - d. Re-grading and re-vegetation necessary to return the subject property to the condition existing prior to establishment of the LWES. The restoration shall reflect the site-specific character including topography, vegetation, drainage, and any unique environmental features
  - e. Implementation of the post-decommissioning storm water runoff plan.

#### **I. FINANCIAL ASSURANCE:**

1. As a condition precedent to Site Plan Approval for a LWES, the Applicant must submit an acceptable form of financial assurance such as cash, performance bond, certificate of deposit, surety bond

or irrevocable standby letter of credit. The amount and form of the financial assurance will be established by the Planning Board and be based on its estimate of the cost for the repair of public infrastructure (per Section C, paragraph 7), for the decommissioning of the LWES and reclamation of the site in the event the Applicant fails to do so, and for the completion of all other improvements or other requirements imposed by the Planning Board pursuant to this Ordinance.

2. The amount of financial assurance shall be reviewed periodically by the Planning Board to assure it equals outstanding decommissioning and other costs. Financial assurance may be adjusted, upwards or downwards, when required by the Planning Board. For instance, the Planning Board may adjust financial assurance based upon prevailing or projected interest or inflation rates, or the latest cost estimates for decommissioning.
3. Such financial assurance shall be kept in full force and effect during the entire time a LWES facility exists or is in place. Such financial assurance shall be irrevocable and non-cancelable until such time as the Planning Board certifies that decommissioning and reclamation or other performance are complete and releases the obligation. If the owner fails to remove the LWES and reclaim the site, the Town of Deering may remove or cause the removal of the LWES and the reclamation of the site. The Town may recover the cost of decommissioning and reclamation or other performance from any financial assurance provided by the owner.
4. If the Applicant fails to complete decommissioning within the periods prescribed above, then the Town may take such measures as necessary to complete decommissioning or any other action provided by law.
5. The escrow agent shall release the decommissioning funds when the Applicant has demonstrated and the Town concurs that decommissioning has been satisfactorily completed, or upon written approval of the Town in order to implement the decommissioning plan.
6. The entry into and submission of evidence of a Participating Landowner agreement to the Town shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Town may take such action as necessary to implement the decommissioning plan.

## **J. APPLICATION PROCEDURE AND REQUIREMENTS**

1. Applications for new and replacement LWESs shall be filed and processed in accordance with the Town of Deering Planning Board's Site Plan Review regulations and the provisions below. In case of any conflict between the Site Review Regulations, the stricter requirement shall apply.
2. An LWES is presumed to have regional impacts. Therefore the procedure shall include notification as per NH RSA 36:54-57.
3. At the time of formal submission of their application for the Site Plan Review, the Applicant shall deposit into an escrow account the amount of \$50,000, subject to the following:
  - a. The purpose of the escrow account is to reimburse the Town for the extraordinary costs to hire consultants and experts as the Planning Board, at its sole discretion, deems necessary for the costs for notification of abutters and for the costs of special investigation and the review of documents and studies required by this ordinance by professionals retained by the Planning Board, and for other matters which may be required by particular applications.
  - b. The escrow account shall be managed as follows:
    - i. Funds may be withdrawn from this account only by the Planning Board.
    - ii. If at any time the balance of this account shall fall below \$15,000, the Applicant shall deposit an amount sufficient to bring the account to a minimum value of \$50,000 or to an amount determined by the Planning Board to be necessary for the costs of special investigations and review which may be required for the application.
    - iii. The Planning Board shall deny an application if an Applicant fails to pay for the costs of notice or other fees required by the Planning Board as provided by RSA 676:4, I (e)(2). If at any time the balance of this fund shall fail to maintain a balance of \$15,000 or the amount specified by the Planning Board for a continuous period of thirty (30) days, the application



shall be considered to have been withdrawn and the Planning Board shall deny the application as provided by RSA 676:4, I (e)(2).

- iv. Following the completion of review by the Planning Board, any balance remaining in this account shall be returned to the Applicant.

4. Submission Requirements: A completed application shall include all of the plans, studies, reports and other information as required by this Ordinance and the Town's Site Plan Regulations. In addition, a completed application for a LWES shall include the following:

- a. Financial Technical and Managerial Capability. An application shall include Financial Resources Plan demonstrating to the Planning Board that the Applicant has adequate financial, technical, and managerial capability to assure construction, financing, operation, monitoring, and decommissioning of the facility in continuing compliance with the terms and conditions of this ordinance. This Plan shall include the Applicant's proposal for performance guarantees for completion of the following: (1) street work; (2) public safety and fire response improvements; (3) stormwater and erosion control measures; (4) wildlife and other on-going studies; (5) wetlands, wildlife or other mitigation measures; (6) decommissioning; and (7) completion of such other studies, improvements or mitigation measures required by the Planning Board pursuant to this Ordinance. The form and amount of performance guarantees shall comply with the requirements in Section I (Financial Assurances). The Financial Resources Plan shall include a cost estimate prepared by a licensed engineer of the above items for review by the Town's engineering or financial consultant.

- b. Visual Impact Assessment. Detailed computer and photographic simulation(s) overlaid on photographs of the existing environment showing the proposed LWES project area fully developed with all proposed wind turbines and related facilities, including the routing for any and all transmission lines. The assessment shall include the following:

- i. A viewshed analysis map showing potential project visibility within the Town of Deering and within a radius

of 5 miles of the outermost turbines of the proposed LWES based on the highest point of all project turbines at blade tip. This should be increased to 10 miles radius if significant visual resources occur beyond 5 miles. The viewshed analysis should distinguish between potential visibility within open areas (e.g. meadows, marshes, water bodies), designated protected viewsheds described in the Town of Deering Master Plan, areas under conservation easement, and forested areas. More detailed studies for individual turbines may be requested. Software specifically designed for viewshed analysis based on GIS should be used.

- ii. Photographic simulations shall be provided for potentially sensitive public viewpoints. The Planning Board may request that particular viewpoints be illustrated. Simulation photographs should be taken at 50mm (or digital equivalent) and illustrated on 11 x 17" printed copies for each simulation. If several photographic frames are required to illustrate the breadth of the project from a particular viewpoint, illustrations shall be provided of each 50mm frame, plus a combined panorama view. Any visible roads, site clearing or other project infrastructure shall be depicted on the simulations.
- iii. The report shall identify all possible public viewing locations with a description of how the project would appear, how many turbines would be visible, and a photograph of the LWES from each location. These locations should include the center of Town, public recreation areas, historic sites (including historic property and historic resources as defined by NH RSA's), trails used by the public, areas under conservation easement, preserves, sanctuaries, designated viewsheds described in the Town of Deering Master Plan, and scenic sections of Town or State roads. Visibility of all project components, including roads, clearings resulting from regrading, and transmission lines shall be addressed.
- iv. The report shall employ a standard visual impact assessment methodology, conducted by a qualified

Landscape Architect or person with similar training and experience, for explaining what the visual impacts of the project would be and why these may be acceptable or unacceptable. Of particular concern are areas open to the public for recreation and areas where there is an expectation of a natural setting. An indication of impacts to private residences shall also be discussed.

- v. The report will identify all mitigation methods proposed by the applicant, if any, to address the potential visual impacts of the LWES. These methods may include turbine relocation, reductions in turbine height or numbers, hazard lighting mitigation by employing automatic obstruction lighting systems, underground placement of collector lines, or other methods.
  - vi. A location map to scale of current and planned land uses within the project boundary and a one-mile radius beyond the project boundary, showing the location of all proposed Wind Turbines and required setbacks for each, and that identifies Participating Landowners. These maps must be prepared by a NH licensed land surveyor.
- c. Site Plan. Vicinity maps and site plans showing the physical features and land uses of the project area. In addition to other requirements of these regulations, the vicinity maps and site plans shall also include maps, plans, section and elevation drawings and written specifications in sufficient detail to clearly describe the following:
- i. Existing zoning districts, land uses, including all dwellings, public and private airstrips within two (2) miles of the boundary of the property upon which the LWES is to be located.
  - ii. Planned land uses within two (2) miles of the boundary of the property upon which the LWES is to be located.
  - iii. Location of all proposed new infrastructure above and below ground related to the project including meteorological and wind testing towers.
  - iv. Location of existing and proposed electrical lines and

related facilities.

- v. required setbacks.
  - vi. Identification and location of sensitive areas and sensitive environmental resources that are in the vicinity of the proposed wind turbine, including but not limited to endangered or threatened flora or fauna or their critical habitats, and other significant habitats identified by any government or other authoritative sources.
  - vii. Soils on site delineated and described in a soil survey map accompanied by a geotechnical report of the soil conditions prepared by a firm that specializes in soil borings that shall at a minimum include: soils engineering and engineering geologic characteristics of the site based on on-site soil borings and testing; foundation design criteria for all proposed structures; slope stability analysis; and grading criteria for ground preparation, cuts and fills, and soil compaction. The proposed plans for the foundation shall be certified by a New Hampshire licensed Professional Engineer who is practicing in his or her area of competency.
  - viii. Location, height, and dimensions of all existing and proposed structures and fencing.
  - ix. Drawings and specifications, bearing the seal of a New Hampshire licensed Professional Engineer, of all proposed new infrastructure above and below ground related to the project including meteorological and wind testing towers.
  - x. Lighting on site described with a lighting plan to minimize light pollution and specifications that show location, color, type, intensity, direction, shielding and control of all on-site lighting.
- d. Historical, Cultural and Archaeological Inventory and Resource Map. The map shall show the locations of recognized historical, cultural, or archeological resources within the project boundary and a two (2) mile radius beyond the project boundary on which the LWES is to be located. The

map shall be prepared by NH licensed land surveyor, and Applicant's plan to minimize impact of LWES construction and operation on these sites.

e. A description of the specific access route(s) to include:

- i. All State, and Town-maintained roads to be used within the Town to transport equipment and parts for construction, operation or maintenance of the LWES.
- ii. A pre-construction inventory of roads in their as-built conditions. The inventory shall identify road surface materials stating the type and amount of surface cover, the existing width and condition of the traveled way, and photographic or video documentation, performed by a New Hampshire licensed Professional Engineer approved by the Planning Board. Engineered drawings showing all easements and the as-built conditions shall be included.
- iii. Dust and erosion control procedures.
- iv. A road maintenance schedule or program.
- v. Location, grades, dimensions and surfacing materials of all temporary and permanent on-site and access roads. Any new roads shall comply with appropriate construction standards.
- vi. Evidence of compliance with standards required for year-round emergency access.

f. Wind Turbine Information and Certification. Specific information on the type, manufacturer and model, size, total installed height, rotor material, rated power output, performance history, safety history, electrical system, rotor overspeed control system, and noise characteristics of each type of Wind Turbine. Identify the length of service of the proposed components. The following information also shall be provided.

- i. An engineering certificate from the manufacturer's engineer or another qualified engineer certifying that the LWES as proposed is within accepted professional

standards given local site, climate and other conditions, including cold weather conditions.

- ii. Ice Throw Calculations: A report from a New Hampshire licensed Professional Engineer that: a) calculates the maximum distance that ice from the turbine blades could be thrown (the basis of the calculation and all assumptions must be disclosed); and states the incidence of reported ice throws and the conditions reported at the time of the ice throw.
  - iii. Blade Throw Calculations: A report from a New Hampshire licensed engineer that: a) calculates the maximum distance that pieces of the turbine blades could be thrown (the basis of the calculation and all assumptions must be disclosed); and b) states the incidence of reported blade throws and the conditions at the time of the blade throw.
  - iv. Wind Turbine Specifications: Photographs or detailed drawings of each Wind Turbine model including the tower and foundation.
  - v. The type and quantity of all hazardous materials used in the operation of all equipment.
  - vi. Certification of the non-reflecting properties of the external surfaces of the LWES.
- g. Catastrophic Failure Report and Test Results. Data from the tower and turbine manufacturers stating the wind speed and conditions that the turbine and tower are designed to withstand (including all assumptions) and the incidence of catastrophic failures both within and outside the United States, including but not limited to, blade throw, blade disintegration, fire, and tower collapse. The report shall include the conditions reported at the time of failure, and the effectiveness of all automatic electrical and mechanical shutdown devices.
- h. Existing Water Quality Study. A pre-construction baseline study conducted by a water quality professional of all wells, springs and water resources, including but not limited to, those located in the Deering Watershed Overlay, which may

be impacted by the LWES. Tests shall be performed in accordance with all applicable laboratory standards and protocols by a state-approved testing laboratory. Testing shall include, but is not limited to, levels of arsenic, nitrates, nitrites, phosphorus, calcium, magnesium, iron, lead, atrazine, hydrocarbons, VOC, bacteria, turbidity, total dissolved solids and documentation of flow rates. Test results shall be submitted to the Planning Board and the owners of tested well sites. The study shall include overlay maps showing the locations of all wells, springs and water resources that may be impacted by the LWES.

- i. The Applicant shall receive written permission from property owners prior to water sampling. It shall be understood that when permission is denied, all responsibility for water quality remains with the property owner.
- ii. All requirements of the Deering Watershed Overlay Ordinance that apply by reason of the location of the proposed LWES in the Watershed Overlay area.

i. Noise Compliance Report. For any proposed LWES, the applicant shall submit a Noise Compliance Report prepared by a professional acoustical engineer approved by the Planning Board who is a Full Member of the Institute of Noise Control Engineering (INCE) or who possesses some comparable qualification. The report will confirm that the LWES will not exceed the maximum permitted sound levels specified in Section C. 5. of this ordinance nor create adverse community noise reactions (CNR) as defined by the United States Environmental Protection Agency Document titled "Information On Levels Of Environmental Noise Requisite To Protect Public Health And Welfare With An Adequate Margin of Safety, 550/9-74-004, March 1974" (Levels Document). The study at a minimum shall include:

- i. A Wind Turbine Noise Model which shall predict the dBA (Leq) and unweighted octave band levels from 31.5 Hz to 8kHz at all Non-participating Landowners' properties within two (2) miles of any Wind Turbine. The Noise Model shall represent all Wind Turbines, shall meet the requirements set forth in Section C. 5. c., and shall use the following parameters:





shall locate the LWES predicted noise level on the x-axis of Figure 1 and determine the highest associated CNR on the y-axis; or determine the highest associated CNR for the predicted LWES noise level using Table 1.

Figure 1. Community Noise Reaction (CNR) Assessment Chart.

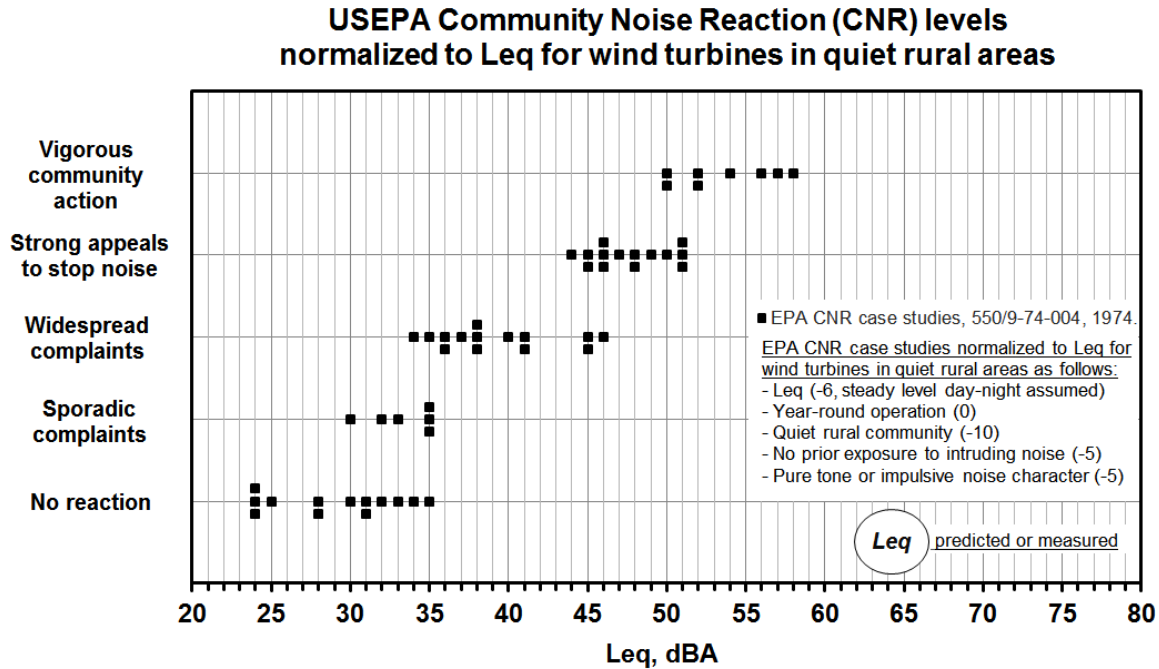


Table 1. Community Reaction Levels for Wind Turbines in Rural Areas

Community Noise Reaction (CNR)	Leq
Vigorous Action	50 - 58
Appeals to Stop the Noise	44 - 49
Widespread Complaints	34 - 43
Sporadic Complaints	30 - 33
No Reaction	24 - 29

iv. Each and all properties within two (2) miles of any Wind Turbine shall be tabulated by: Address, Distance to nearest Wind Turbine, LWES predicted maximum noise level, and LWES predicted community reaction level (CNR).

j. Shadow Flicker, Tower Shadowing and Blade Glint study. For

any proposed LWES, the applicant shall submit a Shadow Flicker, Tower Shadowing and Blade Glint analysis and computer simulation or model prepared by a registered Professional Engineer who is qualified to do so based on training, education and experience. The model shall:

- i. Model and describe the locations where Shadow Flicker, Tower Shadowing and Blade Glint will likely be present; include the topography, existing residences and locations of their windows, locations of other structures, wind speeds and directions, and existing vegetation and roadways; and represent the most probable scenarios of wind constancy, sunshine constancy, and wind directions and speeds.
  - ii. Calculate the expected durations of the flicker at these locations from sun-rise to sun-set over the course of a year, and calculate the total number of hours per year of flicker at all locations.
  - iii. Identify problem zones where Shadow Flicker, Tower Shadowing and Blade Glint will interfere with existing or future residences and roadways and describe proposed measures to mitigate these problems, including but not limited to a change in siting of the LWES, a change in the operation of the LWES, or grading or landscaping mitigation measures.
  - iv. Include the name and address of property owners within Shadow Flicker, Tower Shadowing and Blade Glint zones.
- k. Critical communications study. For any proposed LWES, the applicant shall submit a critical communications study prepared by a New Hampshire licensed Professional Engineer who is qualified to do so based on training, education and experience, which affirmatively demonstrates the LWES will not interfere with critical communications (e.g., radio, telephone, cellular telephone, microwave, satellite, navigational, and/or television signals). The study will include certification that no LWES will be installed in any location where its proximity to existing critical communication systems would produce interference (electromagnetic or

other) with signal transmission or reception. If the study identifies potential signal interference, the applicant shall provide a plan for necessary remedial measures (e.g., a replacement signal) that will restore reception to at least the level present before installation and/or operation of the LWES.

- i. The Applicant shall receive written permission from property owners prior to communications interference testing. It shall be understood that when permission is denied, all responsibility for communications reception quality remains with the property owner.

I. Environmental impact study. The applicant shall have a qualified wildlife biologist acceptable to the Planning Board conduct pre-construction field studies following accepted scientific procedures, to identify and assess any potential impacts on the natural environment, including but not limited to, endangered or threatened wildlife and plant species, their critical habitats, and other significant habitats identified in The Deering Master Plan. Sites requiring special scrutiny include Rare and Exemplary Natural Communities (as classified in the New Hampshire Natural Heritage Bureau publication *Natural Communities of New Hampshire*), wildlife refuges, wetlands, areas where birds are highly concentrated, bat hibernacula, wooded ridge tops that attract wildlife, significant bird migration pathways, and areas that have landscape features known to attract large numbers of raptors. The study shall:

- i. Contain a description of the environmental characteristics of the site prior to development, i.e., topography, soils, vegetative cover, drainage, streams, creeks or ponds;
- ii. Identify natural features that will be retained, removed and/or modified, including vegetation, drainage, hillsides, streams, wetlands, woodlands, wildlife and water. (A description of the areas to be changed shall include their effect on the site and adjacent properties. An aerial photo may be used to delineate the areas of change.);

- iii. Include appropriate measures to minimize, eliminate or mitigate adverse impacts identified in the analysis;
  - iv. Identify and evaluate the significance of any net effects or concerns that will remain after mitigation efforts;
  - v. Demonstrate consistency with development, design and operation recommendations contained in the US Fish and Wildlife Service's "Wind Turbine Guidelines Advisory Committee Recommendations," dated March 4, 2010, or subsequent updates and with applicable parts of the document "Proposed Wind Power Siting Guidelines - May 29, 2007" (which was developed by the Wind Energy Facility Siting Guidelines Working Group and forwarded to the NH Energy Policy Committee Wind Siting Subcommittee);
  - vi. Demonstrate compliance with applicable parts of the *US Endangered Species Act of 1973*, the *New Hampshire Native Plant Protection Act of 1987* (RSA 217-A), *The New Hampshire Endangered Species Conservation Act of 1979* (RSA 212-A), *The New Hampshire Water Management and Protection Act of 1989* (RSA 482-A) and with applicable permits and Rules of The New Hampshire Department of Environmental Services (including, but not limited to, Env-Wt 302.04 and Env-Wt 803.06)
- m. Erosion Control Plan. The Plan shall comply with all state statutes and local ordinances, including the Deering Shorefront Protection Ordinance and the Deering Watershed Overlay Ordinance, to minimize the potential adverse impacts on wetlands streams and the banks and vegetation along those streams and wetlands and to minimize erosion or sedimentation. The Plan should include but is not limited to the following practices:
- i. Structures and access roads should use natural contours and avoid areas of steep slopes where high cuts and fills are required. If fills are required, the fill shall be compacted to at least 90% density, and finished grades shall not exceed a gradient of 2:1. Cut

slope shall not exceed a gradient of 1.5:1

- ii. The smallest practical area of land should be exposed for the shortest practical time during development. The amount of vegetation removed during construction shall be the minimum necessary to operate equipment. Areas where vegetation is removed during construction shall be replanted prior to project startup.
- iii. Measures shall be used to prevent erosion until vegetation is re-established on areas from which it is removed, such as seeding and sodding, stockpiling and reuse of topsoil, temporary use of straw or fabric cover, aggregate cover, diversions authorized by state permit, sediment basins and filters.
- iv. No soils shall remain un-stabilized for more than two days during the period from October 1 through April 30. From May 1 through September 30, no soils shall remain un-stabilized for more than seven days.
- v. Storm Water Runoff Control Plan. This plan should comply with the requirements of Section 5 of the Town of Deering Site Plan Review Regulations.
- n. Blasting Plan. A blasting plan consistent with applicable laws and regulations as specified in Section C.1.e.
- o. Plan for disposal of liquid, solid and any hazardous wastes (e.g., crates, packaging material, damaged or worn parts, used oils and lubricants). The purpose is to insure that any solid and hazardous wastes are removed from the site promptly and disposed of in accordance with all applicable local, state and federal regulations.
- p. Hazard Prevention and Emergency Response Plan. The Plan shall consider the construction, operation and decommissioning of the LWES and at a minimum include the following:
  - i. A statement of all potential scenarios relating to tower collapse, fire, and accidental or emergency discharge of

- hazardous substances (e.g. petroleum products),
- ii. Certification by a New Hampshire licensed Professional Engineer that the electrical wiring between turbines and between turbines and the utility right-of-way does not pose a fire or stray voltage hazard.
  - iii. Certification by an New Hampshire licensed Professional Engineer that the turbine has been designed to contain any hazardous fluids and a statement certifying that the turbine shall be routinely inspected to ensure that no fluids are released or leaked from the turbine or any other equipment or on the site.
  - iv. A list of hazardous materials that may be encountered and manufacturers' material safety data sheet(s).
  - v. A landscape plan designed to avoid spread of fire from any source on the turbine.
  - vi. Plans to prevent or minimize human health or environmental damage, including spill prevention, control, and counter-measures.
  - vii. Identification of necessary equipment and training for local fire protection and rescue personnel. This shall be provided at applicant expense if the application is approved and a permit is granted.
  - viii. Emergency contact information.
- q. Life Cycle and Decommissioning Plan. The applicant shall submit a life cycle and decommissioning plan as described in Sections C. 14 and Section H, above and prior to Site Plan Approval shall provide sufficient funds in an amount, form and manner acceptable to the Planning Board to carry out the plan. The Decommissioning Plan shall provide for periodic updates of decommissioning costs during the Planning Board's review of applications for a Permit to Operate as provided by Section E. 2.
- r. Signed and proposed copies of all leases, agreements, including "Good Neighbor Agreements" or their equivalent,

and recorded easements from all affected landowners and governing municipalities, including but not limited to, permitting easements or other agreements involving:

- i. Right-of-ways for all overhead and underground control and distribution systems.
  - ii. Required setbacks.
  - iii. Impacts from Sound, Shadow Flicker, Tower Shadowing and Blade Glint.
- s. Complaint Resolution Process. A process to resolve complaints from affected parties during construction and over the life of the operation. The Plan shall identify a contact person and a process for mediation and shall meet the requirements set forth in paragraph F of this Article.
- t. Abandonment Liability. Signed and notarized legal document stating the landowner will be held liable for removal of the wind turbine(s) should the owner or operators' LLC (or other corporate distinction) become liquidated or the posted bond not be sufficient to cover the costs associated with removal.
- u. Environmental Resource Map prepared by a qualified NH licensed land surveyor.
- v. Intended period of data collection for the Met Tower.
- w. Certification of the non-reflecting properties of the external surfaces of the LWES.
- x. Studies and Reports as required by the Planning Board. The cost of any required study, report, plan, mitigation effort, or any other work required to be done by the Planning Board, is the full responsibility of the applicant.
- y. Proof of insurance satisfactory to the Planning Board
- z. Lists of Experts and Evidence of Qualifications. The Applicant shall supply the name, address, and resume or other written

summary of the education, experience, and other qualifications of such expert providing information concerning the wind energy system or anemometer tower project.

- aa. Electrical Interconnection Plan. The Applicant shall provide a plan for electrical interconnection showing methods and standards for interconnection and copies of all contracts or letters of intent with the electric utilities and the electric transmission services provider.
  
- bb. Certification of Compliance. The applicant shall provide certification that the applicant has complied with or will comply with all applicable Town, state and federal laws and regulations, including but not limited to:
  - i. Copies of all permits and approvals that have been sought and obtained or denied at the time of the application.
  
  - ii. Written documentation that the applicant has notified the Federal Aviation Administration and any other applicable state and federal regulatory agencies of the proposed LWES
  
- cc. Studies and Reports as required by the Planning Board. The cost of any experts, required study, report, plan, mitigation effort, or any other work required to be done by the Planning Board to consider the application is the full responsibility of the applicant.

## **K. CRITERIA FOR APPROVAL**

The Planning Board shall approve an application, subject to conditions, only if the Applicant demonstrates that all of the following criteria have been met:

- A. The proposed LWES complies with all of the requirements of this Ordinance, the Town's Zoning Ordinance and the Town's Site Plan Regulations.
  
- B. The proposed LWES will not unreasonably interfere with the use and enjoyment of property by non-participating land owners.



- C. The proposed LWES will not have an unreasonable adverse impact on aesthetics, historic sites, air and water quality, the natural environment, and public health.
- D. The proposed LWES will not have an unreasonable adverse impact on public safety and the Town has sufficient emergency response capability.
- E. The proposed LWES will not have a negative financial impact on the Town.
- F. The proposed LWES includes adequate financial and other assurances to ensure the continued operation and decommissioning of the proposed LWES in compliance with the terms of this Ordinance.

If an Applicant fails to demonstrate that all of the above criteria have been met, the Planning Board shall deny the application as provided by RSA 676:3.

**L. SEVERABILITY & APPLICABILITY:**

The invalidity of any provision of this Article shall not affect the validity of any other provision, nor any prior decisions made on the basis of the valid provisions of this Article.

The standards established by this Ordinance govern both the review of applications for Site Plan approval of LWES projects and construction, operation and decommissioning of LWES projects. As used in this Ordinance, standards applicable to an "Applicant" shall also apply to a subsequent Owner of an LWES.

## **ARTICLE 12: HISTORIC DISTRICT ORDINANCE <sup>21</sup>**

### **SECTION I, PURPOSE**

The purpose of this ordinance is to promote the educational, cultural, economic and general welfare of the public by the protection, enhancement, perpetuation and preservation of a Historic Town Center and other areas that may be designated as additions to the Historic District. The Historic Town Center includes several historic buildings in the town center (Town Hall, Deering Community Church, Old School House and several residential properties). These historic buildings represent the architectural style of the 18<sup>th</sup> and early 19<sup>th</sup> century that provides the basic criteria for structural changes to be carried out within the district. Forming Historic Districts will preserve and safeguard the heritage of Deering by:

1. Preserving districts in Deering which reflect elements of its cultural, social, economic, political and architectural history;
2. Conserving property values in such districts;
3. Fostering civic beauty and rural character;
4. Strengthening the local economy;
5. Promoting the uses of a historic district for the education, pleasure and welfare of the citizens of Deering.

### **SECTION II, THE HISTORIC DISTRICT BOUNDARIES, INCLUDED PROPERTIES, AND OWNER RESPONSIBILITIES**

- A. Boundaries: The Historic District(s), which shall include the Historic Town Center, is defined on the town zoning maps which are on file in the Town Clerk's office of the Town of Deering.
- B. Included Properties: All properties within a Historic District are eligible to be subject to the provisions of this Ordinance, but shall become subject to the Ordinance only if the owners of the property so elect. All owners of properties within a Historic District shall be invited to elect to participate. An election by a property owner to participate in a Historic District shall occur in writing in a manner determined by the Historic District Commission under the rules and regulations established by said Commission in accordance with the provision of this Ordinance. Owners of properties subject to

provisions of this Ordinance shall be required to amend their property title to include covenants required by the Historic District Commission to bind future owners of the property.

C. Responsibilities of Property Owners: Owners of property who have elected to make the property subject to the requirements of this Ordinance shall have the following responsibilities:

1. Obtain Certificates of Approval before taking any action for which a certificate is required by this Ordinance and/or the rules and regulations promulgated by the Historic District Commission.
2. Carry out all work authorized by a Certificate of Approval in accordance with the certificate and any conditions it contains.
3. Assure that the recorded title of the property subject to the Historic District is amended to bind future property owners as required by the Historic District Commission by recording the specific covenant(s) adopted by the Historic District Commission for this purpose. The Historic District Commission may, at its option, provide funds from its budget or from gifts, grants and contributions (Section IV, paragraphs 13. and 18, below) to reimburse a property owner for any governmental recording fees they may incur.

D. Expansion: From time to time the Historic District Commission may create additional Historic Districts, review additional properties to include in a Historic District and expand the boundaries of an existing Historic District. Any expansion shall be in accordance with the applicable RSA's, and the Town of Deering Master Plan and Zoning Ordinance and shall require a majority vote of all members of the Historic District Commission following a public hearing with fifteen (15) calendar days notice. Any Historic District established under authority of this ordinance may be abolished in the manner provided in RSA 674:47 as amended.

### **SECTION III, HISTORIC DISTRICT COMMISSION**

In order to carry out the purpose of this ordinance, there shall be a Historic District Commission.

1. Members and not more than three alternates shall be appointed by the Board of Selectmen consistent with RSA 673:4, 5, 6, 12 and 13.

2. In the event of a vacancy on the commission, interim appointments shall be made within 60 days by the appointing authority to complete the unexpired term of such position.
3. The conduct of members and alternates shall be governed by RSA 673:14.
4. Membership shall consist of not fewer than five or more than seven regular members, one of whom shall represent the Board of Selectmen and one of whom shall represent the Planning Board. Both of these members shall be *ex officio*.

Qualifications: In selecting each member, the Board of Selectmen shall take into consideration the appointee's demonstrated interest and ability to understand, appreciate and promote the purposes of the Historic District Commission. To the extent that professionals in the following disciplines are available in the community, the Board of Selectmen shall make reasonable efforts to appoint members from those professions: architectural history, archaeology, cultural anthropology, United States history or town planning. Members shall be residents of the Town of Deering.

#### **SECTION IV, POWERS AND DUTIES**

The Historic District Commission shall exercise the following powers and duties in accordance with RSA 674:46-a:

1. Establish through rules and regulations the procedures and requirements for an owner to elect to have a property within a Historic District become subject to its requirements.
2. Accept, review, and act upon all applications to construct, repair, move, demolish, change use, or alter, any structure or property situated within the boundaries and subject to the requirements of any historic district established hereunder. This includes approving, approving with conditions, or denying a Certificate of Approval. Where a building permit is required by the Town of Deering Zoning Ordinance, no permit shall be granted without a Certificate of Approval.
3. The Historic District Commission may refuse to issue a Certificate of Approval to construct, repair, move, demolish, change use, or alter, any structure or property situated within the boundaries and subject to the requirements of any Historic District which, in the opinion of

Historic District Commission would be detrimental to the interest of the Historic District and against the public interest of the Town.

4. Conduct small area or community-wide surveys of historic, architectural, and cultural resources.
5. Prepare historic resource components of local master plans and ensure that the impact on historical resources is considered at every level of local decision making.
6. Advise other elements of local, state, and federal government regarding the identification, protection, and preservation of local historical, architectural, archaeological, and cultural resources.
7. Consult on applications for zoning amendments, variances, conditional uses, and other approvals affecting property within a Historic District and subject to its requirements.
8. Investigate and recommend to the Planning Board and Selectmen amendments to these provisions.
9. Act as a liaison between local government and individuals or organizations concerned with historic preservation.
10. Educate municipal officials, property owners, the public, and individual members of the Commission about the Historic District(s) and historic preservation.
11. Participate in informational, advisory, and policy setting meetings about historic preservation issues and historic district commissions.
12. Develop and administer a system of markers and monuments recognizing individual properties within the district and acknowledging special contributions toward historic preservation by members of the community.
13. Develop and submit an annual request for funds to the Selectmen.
14. Adopt, and from time to time amend, rules and regulations to implement this ordinance that are consistent with the Town of Deering Zoning Ordinance and the regulations adopted by other Town of Deering boards regarding the review of items, which may also be subject to review by those boards. Regulations shall be adopted in the manner required by RSA 675:6 and RSA 675:7.

15. Invite any applicant to appear before the Historic Commission for a conceptual consultation. A consultation session would focus on sharing information regarding the applicant's plans to meet Commission requirements.
16. When considering any application: a. At the expense of the applicant, seek advice from such professional, educational, cultural and other groups of persons whose analysis and comments may be necessary in the exercise of these powers and duties; b. Where appropriate, request reports and recommendations regarding the feasibility of an applicant's proposal from the Planning Board, Fire Department, Building Inspector, Health Inspector, Health Officer and other town officials who may possess information concerning the impact of the proposal on the Historic District.
17. Provide reports and recommendations regarding the feasibility of an applicant's proposal to the Planning Board and other administrative officials who may require information pertinent to the application.
18. Accept and use gifts, grants and contributions for the benefit of any Historic District and for the exercise of its functions.
19. Act to create additional Historic Districts, expand the properties within any Historic District or to expand the boundaries of any Historic District, in accordance with Section II, D of this ordinance.
20. Take any other appropriate action or activity necessary to carry out its powers and duties.

## **SECTION V, STANDARDS FOR REVIEW AND CERTIFICATES OF APPROVAL/DISAPPROVAL**

### **A. STANDARDS FOR REVIEW**

Changes that have taken place in the course of time are evidence of the history and development of the property. These changes may have acquired significance in their own right, and this significance shall be recognized and respected. The following standards shall be used by the Historic District Commission in reviewing applications for Certificates of Approval and shall be revised only by formal amendment to this Ordinance.

1. Every reasonable effort shall be made to minimize alteration to the significant features of the property.
2. The distinguishing original qualities or character of the property shall not be destroyed. Wherever possible, the removal or alteration of any historic material or distinctive architectural features shall be avoided.
3. All structures and sites shall be recognized as products of their own time. Alterations that are not in harmony with the dominant architectural style of the historic buildings within the district shall be avoided.
4. Distinctive stylistic features or examples of skilled craftsmanship that characterize a property shall be treated with sensitivity.
5. Deteriorated architectural features shall be repaired rather than replaced wherever possible. In the event replacement is necessary, the new material should match the material being replaced in design, color, texture, and other visual qualities.
6. Contemporary design for alterations and additions to existing properties should not be discouraged when such designs do not destroy significant historical, architectural, or cultural material, and when those designs are compatible with the size, scale, color, material, and character of the property, neighborhood, and surrounding buildings.

#### B. CERTIFICATES FOR APPROVAL/DISAPPROVAL

Upon receipt of an application to construct, repair, move, demolish, change use or alter any structure or property within a Historic District, the Commission shall schedule a public hearing with at least fifteen (15) calendar days notice to all owners of property within the District and subject to its requirements in order to determine its impact on the District. Upon review and determination of the application, the Commission shall file a Certificate of Approval, Conditional Approval or Notice of Disapproval with the Zoning Administrator. Determination on an application shall be in the opinion of the *majority of voting commission members present*.

1. Approval. Work shall not commence unless a Certificate of Approval is filed with the Zoning Administrator. In cases where Zoning Ordinance also requires a building permit, the Zoning Administrator shall not issue the building permit until the Commission has filed a Certificate of Approval.
2. Conditional Approval. In appropriate cases, the Commission may grant Conditional Approval of an application. Conditional approval shall become final and a Certificate of Approval shall be issued without further public hearing upon certification to the Commission by its designee, or based upon evidence submitted by the applicant, of satisfactory compliance with the conditions imposed only in those cases in which the conditions are:
  - a. Minor plan changes as a result of a public hearing, compliance with which is administrative and which does not involve discretionary judgment on the part of the Commission; or
  - b. Conditions that are in themselves administrative and that involve no discretionary judgment on the part of the Commission.

All other conditions shall require an additional hearing and notice, except that additional notice shall not be required of an adjourned session of a hearing with proper notice if the date, time and place of the adjourned session were made known at the prior hearing.

3. Disapproval. In case of disapproval of any application submitted to the Commission, the grounds for such disapproval shall be adequately stated in the Notice of Disapproval. The Notice of Disapproval shall be binding upon the Zoning Administrator and no building permit shall be issued. Notice of Disapproval holders may make modifications to the disapproved plans and resubmit the application for hearing without prejudice.
4. Deadlines. The Commission shall file with the Zoning Administrator a Certificate of Approval, Conditional Approval, or a Notice of Disapproval pursuant to RSA 676:9 within 45 days after the filing of a completed application for the certificate with the Zoning Administrator, unless the



applicant agrees to a longer period of time. Failure to file either the certificate or the notice within the specified period of time shall constitute approval by the Commission. Pursuant to RSA 676:3 II, the Certificate of Approval, Conditional Approval or Notice of Disapproval shall be placed on file and made available for public inspection within 144 hours after the Commission makes the decision.

5. Commencement of Work. The applicant shall wait until 20 calendar days have expired after the date the Certificate of Approval is filed with the Zoning Administrator before commencing work to allow sufficient time for any aggrieved parties to appeal the decision. Upon commencement of work, the Certificate of Approval holder shall promptly and diligently pursue completion of the work approved. Work done under a Certificate of Approval shall commence within one year of issuance of the certificate thereof; unless otherwise authorized by the Commission.
6. Completion of work. Work shall be completed within two years of an issuance of a certificate of approval unless otherwise authorized by the Commission. Where a Certificate of Approval holder submits a new application prior to completion of an outstanding Certificate of Approval, the Commission, prior to considering the new application, may require a showing of good cause for any unreasonable delay found by the Commission to have occurred concerning the outstanding Certificate of Approval.
7. Inspections. Upon completion of the work, the applicant shall call the office of the Zoning Administrator for a final inspection and a representative of the Commission shall be assigned to inspect the work for compliance with the Certificate of Approval. Notwithstanding the requirement for a final inspection, the Commission reserves the right to make periodic inspections while the work is in progress.
8. Submission. All applications shall include the following as needed:
  - a. The completed application form and any required fees.

- b. Photographs of the building or site before the proposed alteration.
- c. All signs which are subject to view from a public street, way or place.
- d. Elevations of the proposed building or structure with colors and materials clearly indicated.
- e. Drawings sufficient to describe in detail the work proposed.
- f. The type or types of materials to be used on the structure.
- g. Paint color samples if the work includes repainting and specifications of the proposed colors.
- h. The type of roof (i.e. gable, salt box, hip, gambrel), samples of roofing materials and/or manufacturer's literature.
- i. Samples, colors and/or literature on all other proprietary materials or products that will be used and visible in the alteration or construction.
- j. Architectural detail (which may include such elements as cornices, lintels, arches, balustrades, railings, entrance doors, windows, dormers and chimneys).
- k. The type or types of materials used to construct or install paving, walks, walls, steps, and similar features.
- l. The type or types of material used to construct fencing or screening.
- m. The placement of and types of lighting fixtures, lights and poles.
- n. Manner in which proposed trash receptacles shall be located and/or screened.

- o. In the case of demolition or removal, a statement of the proposed condition and appearance of the property before and after demolition or removal, including the clearing of building materials and debris from site, as may be reasonably deemed necessary by the Commission to enable it to make a determination on the application.
- p. Provision for the preservation of significant trees (12" in diameter, 4 feet above ground).
- q. Provision for keeping animals, if any.

## **SECTION VI, INTERPRETATION**

Nothing in this ordinance shall be construed to prevent ordinary maintenance or repair of any structure or place within any Historic District nor to prevent the construction, alteration, repair, moving or demolition of any structure under a permit issued by the Building Inspector or any duly delegated authority prior to the establishment of such district.

## **SECTION VII, VIOLATIONS**

Violations of this ordinance shall be enforced through the Town of Deering Zoning Ordinance as provided in RSA 674:49.

## **SECTION VIII, APPEAL**

Any person or persons jointly or severally aggrieved by a decision of the Historic District Commission shall have the right to appeal concerning such decision to the Zoning Board of Adjustment as provided in RSA 677:17.

## **SECTION IX, VALIDITY**

If any section, subsection, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

## **SECTION X, EFFECTIVE DATE**

This ordinance shall take effect \_\_\_\_\_.

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## APPENDIX

This following numbers refer to the section numbers in the 2006 Zoning Ordinance, initially adopted, March 11, 1986, containing amendments enacted: March 8, 1988; March 14, 1989; March 13, 1990; March 12, 1991; June 13, 1994; March 12, 1996; March 11, 1997; March 9, 1999; March 14, 2000; March 13, 2001; and March 12, 2002; March 11, 2003, March 8, 2005, and March 14, 2006. The March 15, 2008 Town Meeting adopted this reformatted ordinance, with amendments and alterations identified herein.

<sup>1</sup> This preface was included in the Ordinance as of 2002 and 2003 and was originally not a numbered section of the Ordinance, only a "preface."

<sup>2</sup> Originally section 1.

<sup>3</sup> Originally numbered as sections 2.1 and 2.2.

<sup>4</sup> Originally numbered as sections 3.1, 3.2, and 3.3.

<sup>5</sup> Adopted as Section 4.1.

<sup>6</sup> Adopted as Section 16 in 2006.

<sup>7</sup> Adopted as Section 5 in 1988.

<sup>8</sup> Originally numbered section 2.3 through 2.9.

<sup>9</sup> Adopted as Section 8 in 1990, which became effective upon passage at Town Meeting March 1990.

<sup>10</sup> Adopted as Section 9 in 1991.

<sup>11</sup> Adopted as Section 10 in 1997, which became effective upon passage at Town Meeting March 11, 1997.

<sup>12</sup> Adopted as Section 7: Board of Adjustment and Administrative Provisions.

<sup>13</sup> Adopted as section 6, retitled Non-conforming Structures and Uses.

<sup>14</sup> Adopted as Section 11 in 2000.

<sup>15</sup> Adopted as Section 13 in 2005.

<sup>16</sup> Originally numbered 2.10.

<sup>17</sup> Adopted as Section 14 in 2005.

<sup>18</sup> Adopted as Section 15 in 2006.

<sup>19</sup> This section replaces four separate "savings" clauses in the previous document.

<sup>20</sup> Ordinance adopted on March 8, 2016. Added to the ordinance as Section 11 in 2018. Written as it was adopted.

<sup>21</sup> Ordinance adopted on \_\_\_\_\_. Added to the ordinance as Section 12 in 2018. Written as it was adopted.

This document is a compilation of a number of warrant articles enacted by the Town of Deering from March 11, 1986, to the present. Although reasonable efforts have been made to ensure that the provisions of the original warrant articles have been restated accurately herein, in the event any of the provisions set forth in this document differ from those in the original warrant articles, the latter will govern.