

SECTION XVII - ZONING GROUNDWATER PROTECTION DISTRICT

(Adopted: Article XVIII, June 3, 2002 Annual Town Meeting)

1. PURPOSE OF DISTRICT

The purpose of this Groundwater Protection District is to:

- a. promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Towns of Rochester, Marion, Mattapoisett, Fairhaven and Acushnet.
- b. preserve and protect existing and potential sources of drinking waters supplies;
- c. conserve the natural resources of the town; and
- d. prevent temporary and permanent contamination of the environment.

2. SCOPE OF AUTHORITY

The Groundwater Protection District is an overlay district superimposed on the zoning districts. This overlay district shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Applicable activities/uses in one or more underlying zoning districts which fall within the Groundwater Protection District must additionally comply with the requirements of this district. Uses prohibited in the underlying zoning districts shall not be permitted in the Groundwater Protection District.

3. DEFINITIONS

For the purposes of this section, the following terms are defined below:

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

Groundwater Protection District: The zoning district defined to overlay other zoning districts in the Town of Rochester. The groundwater protection district may include specifically designated recharge areas. The District shall include Zone I and Zone II as defined below:

Zone I: The 100 to 400 foot protective radius around a public water system well or wellfield which must be owned by the water supplier

or controlled through a conservation restriction.

Zone II: The land area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield with no recharge from precipitation), as defined in 310 CMR 22.00.

Impervious Surface: Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

Mining: The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores, or bedrock.

Potential Drinking Water Sources: Areas which could provide significant potable water in the future.

Recharge Areas: Areas that collect precipitation or surface water and carry it to aquifers. Recharge areas may include areas designated as both Zone I and Zone II.

Toxic or Hazardous Material: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water in the Town of Rochester. Toxic or hazardous materials include, without limitation: synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under Massachusetts General Laws (M.G.L.) Chapter (c.) 21C and 21E and 310 CMR 30.00, and also include such products as solvents and thinners stored in quantities greater than suitable for normal household use.

4. ESTABLISHMENT AND DELINEATION OF GROUND WATER DISTRICT

The boundaries of the Groundwater Protection District are delineated on a map having a scale of 1 inch to 1320 feet and is entitled "Groundwater Protection District, Town of Rochester", dated June 2003. This map is hereby made a part of the Town Zoning By-law and is on file in the Office of the Town Clerk.

(Amended: Article XIX, June 9, 2003 Annual Town Meeting)

5. DISTRICT BOUNDARY DISPUTES

The forgoing boundaries of the Groundwater Protection District are based on mapping by the Massachusetts Department of Environmental Protection. In addition to the uses authorized by special permit under Section XVII, 6, C, below, the Special Permit Granting Authority (SPGA) may grant a Special Permit within the Groundwater Protection District for any use prohibited hereunder based upon a finding, supported by appropriate hydro geologic data, that the Town Map is inaccurate based on the criteria set forth in this section, and that the proposed use would be authorized or could be permitted if the zone were accurately mapped based on those criteria.

The Town may engage a professional engineer, hydrologist, geologist, soil scientist, or attorney to determine more accurately the boundaries of the district with respect to individual parcels of land, and may require the applicant to pay for the cost of the investigation pursuant to the procedures specified in M.G.L. Chapter 44, section 53G.

The determination of the location and extent of Zone II shall be in conformance with the criteria set forth in 310 CMR 22.00 and in the DEP's Guidelines and Policies for Public Water Systems.

6. USE REGULATIONS

In the Groundwater Protection District the following regulations shall apply:

A. Permitted Uses

The following uses are permitted within the Groundwater Protection District, provided that all necessary permits, orders, or approvals required by local, state, or federal law are also obtained:

- i. conservation of soil, water, plants and wildlife;
- ii. outdoor recreation, nature study, boating, fishing and hunting where otherwise legally permitted;
- iii. foot, bicycle and/or horse paths, bridges;
- iv. normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
- v. maintenance, repair, and enlargement of any existing structure, subject to Section B (prohibited uses) and Section C (special permitted uses);

- vi. residential development, subject to Section B (prohibited uses) and Section C (special permitted uses);
- vii. farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to Section B (prohibited uses) and Section C (special permitted uses)
- viii. construction, maintenance, repair and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels.

Underground storage tanks related to these activities are not categorically permitted.

B. Prohibited Uses

The following uses are prohibited:

- i. landfills and open dumps as defined in 310 CMR 19.006;
- ii. automobile graveyards and junkyards, as defined in M.G.L. c. 140B, §1;
- iii. landfills receiving only wastewater and/or septage residuals including those approved by the Department pursuant to M.G.L.c.21, §26 through 53; M.G.L. c.111, §17, M.G.L. c.83, §6 and 7, and regulations promulgated thereunder;
- iv. facilities that generate, treat, store, or dispose of hazardous waste that are subject to M.G.L.c.21C and 310 30.00, except for the following:
 - a) very small quantity generators as defined under 310 CMR 30.000;
 - b) household hazardous waste centers and events under 310 CMR 30.390
 - c) waste oil retention facilities required by M.G.L.c.21, §52A;
 - d) water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters;
- v. petroleum, fuel oil, and heating oil bulk stations and terminals including, but not limited to those listed under Standard Industrial Classification (SIC) Codes 5171 and 5983. SIC Codes are established by the U.S. Office of Management and Budget and may be determined by referring to the publication, Standard

- Industrial Classification Manual, and any other subsequent amendments;
- vi. storage of liquid hazardous materials, as defined in M.G.L.c.21E, and/or liquid petroleum products unless such storage is:
 - a) above ground level, and;
 - b) on an impervious surface, and
 - c) either
 - i. in container(s) or above ground tank(s) within a building, or;
 - ii. outdoors in covered container(s) or above ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater;
 - vii. storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
 - viii. storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
 - ix. storage of animal manure, except for agricultural uses, as defined by M.G.L. Chapter 40A Section 3 which includes raising of horses, stabling of horses, training of horses through operation of riding school and participation in horse shows, unless covered or contained in accordance with the specifications of the Natural Resource Conservation Service;
 - x. earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material (including mining activities) within 4 feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works;
 - xi. Discharge to the ground of non-sanitary wastewater including industrial and commercial process waste water, except:

- a) the replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
 - b) treatment works approved by the Department designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13);
 - c) publicly owned treatment works;
- xii. stockpiling and disposal of snow and ice containing deicing chemicals brought in from outside the district;
 - xiii. storage of commercial fertilizers, as defined in M.G.L. Chapter 128 §64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

C. Uses and Activities Requiring a Special Permit

The following uses and activities are permitted only upon the issuance of a Special Permit by the Special Permit Granting Authority (SPGA) under such conditions as they may require:

- i. enlargement or alteration of existing uses that do not conform to the Groundwater Protection District;
- ii. those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying zoning (except as prohibited under Section B). Such permit shall be subject to all conditions necessary to prevent contamination of groundwater;
- iii. any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

- iv. the application of pesticides, including herbicide, insecticides, fungicides, and rodenticides, for non-domestic or non-agricultural uses in accordance with state and federal standards. The Special Permit shall be granted if such standards are met.
- v. the application of fertilizers for non-domestic or non-agricultural uses. Such applications shall be made in a manner so as to minimize adverse impacts on groundwater due to nutrient transport, deposition, and sedimentation.
- vi. the construction of non-agricultural dams or other water control devices, ponds, pools or other changes in water bodies or courses, created for swimming, fishing, other recreational uses, or drainage improvements. Such activities shall not adversely affect water quality or quantity.

7. PROCEDURES FOR ISSUANCE OF SPECIAL PERMIT

- A. The Special Permit Granting Authority (SPGA) under this bylaw shall be the Rochester Planning Board. Such special permit shall be granted if the SPGA determines, in conjunction with the Board of Health, the Conservation Commission, the Highway Surveyor, the Building Commissioner, and the Mattapoissett River Valley Water Supply Protection Advisory Committee that the intent of this bylaw, as well as its specific criteria, are met. The SPGA shall not grant a special permit under this section unless the petitioner's application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section. The SPGA shall document the basis for any departures from the recommendations of the other (town)(city) boards or agencies in its decision.
- B. Upon receipt of the special permit application, the SPGA shall transmit one copy to the Board of Health, the Conservation Commission, Highway Surveyor, the Building Commissioner, and the Mattapoissett River Valley Water Supply Protection Advisory Committee for their written recommendations. Failure to respond in writing within 35 days of receipt by the Board shall indicate approval or no desire to comment by said agency. The necessary number of copies of the application shall be furnished by the applicant.
- C. The SPGA may grant the required special permit only upon

finding that the proposed use meets the following standards, those specified in Section 6 of this bylaw, and any regulations or guidelines adopted by the SPGA. The proposed use must:

1. in no way, during construction or thereafter, adversely affect the existing or potential quality of quantity of water that is available in the Groundwater Protection District; and
 2. be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
- D. The SPGA may adopt regulations to govern design features of projects. Such regulations shall be consistent with subdivision regulations adopted by the municipality.
- E. The applicant shall file six copies of a site plan and attachments. The site plan shall be drawn at a proper scale as determined by the SPGA and be stamped by a professional engineer. All additional submittals shall be prepared by qualified professionals. The site plan and its attachments shall at a minimum include the following information where pertinent:
1. a complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;
 2. for those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief, and Board of Health. The plan shall include:
 - a. provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;
 - b. provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;
 - c. evidence of compliance with the regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection.

3. Proposed down-gradient location(s) for groundwater monitoring well(s), should the SPGA deem the activity a potential groundwater threat.
- F. The SPGA shall hold a hearing, in conformity with the provision of MGL Chapter 40A, Section 9, within 65 days after the filing of the application and after the review by the Town Boards, Departments and Commissions.

Notice of the public hearing shall be given by publication and posting and by first-class mailings to “parties of interest” as defined in MGL Chapter 40A, §11. The decision of the SPGA and any extension, modification, or renewal thereof shall be filed with the SPGA and Town Clerk within 90 days following the closing of the public hearing. Failure of the SPGA to act within 90 days shall be deemed as a granting of the permit. However, no work shall commence until a certification is recorded as required by MGL Chapter 40A, 11.

8. VIOLATIONS:

G. Written notice of any violations of this Section shall be given by the Zoning Enforcement Officer to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance. A copy of such notice shall be submitted to the Building Commissioner, the Board of Health, Conservation Commission, and the Highway Surveyor. The cost of containment, clean-up, or other action of compliance shall be borne by the owner and operator of the premises.

9. SEVERABILITY

A determination that any portion or provision of this overlay protection district is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any special permit previously issued thereunder.