



# **TOWN OF EFFINGHAM**

## **ZONING ORDINANCE**

**Effective Date**

**March 13, 2012**

# **Town of Effingham Zoning Ordinance Table of Contents**

|   | Page     |
|---|----------|
| <b>ARTICLE 1 - PREAMBLE AND TITLE</b>   | <b>1</b> |
| Section 101    Preamble   | 1        |
| Section 102    Title  | 1        |
| Section 103    Land Use Limited to Specific Listed Uses                               | 1        |
| <b>ARTICLE 2 - EXISTING USES</b>  | <b>1</b> |
| Section 201    Existing Uses  | 1        |
| <b>ARTICLE 3 – DEFINITIONS</b>  | <b>1</b> |
| Section 301    Interpretation   | 1        |
| Section 302    Definitions  | 1        |
| <b>ARTICLE 4 - DISTRICTS, LOT REQUIREMENTS AND MAPS</b>                               | <b>5</b> |
| Section 401    Establishing Districts   | 5        |
| Section 402    Lot requirements   | 5        |
| 402.1    Residential Accessory Building Exception                                     | 5        |
| Section 403    Zoning and Steep Slopes Maps   | 6        |
| <b>ARTICLE 5 - PERMITTED USES</b>   | <b>6</b> |
| Section 501    Permitted Uses   | 6        |
| <b>ARTICLE 6 - GENERAL PROVISIONS</b>   | <b>6</b> |
| Section 601    Conflicts  | 6        |
| Section 602    Reduction of Lot Area  | 6        |
| Section 603    Yards on Corner Lots   | 6        |
| Section 604    Abandonment of Structures and Excavations                              | 6        |
| Section 605    Motor Vehicle/Trailer Storage  | 6        |
| Section 606    Building Height  | 7        |
| Section 608    Province Lake District Performance Standards                           | 7        |
| <b>ARTICLE 7 - NON-CONFORMING USES AND STRUCTURES</b>                                 | <b>7</b> |
| Section 701    Definition   | 7        |
| Section 702    Change or Expansion of Non-Conforming Use                              | 7        |
| Section 703    Abandonment of Non-Conforming Use or Structure                         | 7        |
| Section 704    Damage to a Non-Conforming Structure                                   | 8        |
| Section 705    Damage to a Non-Conforming Use   | 8        |
| Section 706    Expansion of a Non-Conforming Structure                                | 8        |
| Section 707    Lot of Record  | 8        |
| Section 708    Lot Density  | 8        |
| Section 709    Voluntary Demolition/Removal & Replacement of Non-Conforming Structure | 9        |
| <b>ARTICLE 8 - MANUFACTURED HOUSING</b>   | <b>9</b> |
| Section 801    Intent   | 9        |
| <b>ARTICLE 9 - SPECIAL EXCEPTIONS</b>   | <b>9</b> |
| Section 901    R.S.A. 674:33 IV   | 9        |
| Section 902    Noxious Use  | 9        |
| Section 903    General Provisions   | 9        |
| Section 904    Conditions for Approval  | 9        |

|   |           |
|---|-----------|
| <b>ARTICLE 10 - CONDITIONS FOR APPROVAL OF PERMITTED USES</b>                         | <b>10</b> |
| Section 1001    Accessory Building/Use  | 10        |
| Section 1002    Aggregate Extraction  | 10        |
| Section 1003    Automobile Service Station  | 10        |
| Section 1004    Automobile and Truck Repair Station                                   | 10        |
| Section 1005    Bed and Breakfast   | 11        |
| Section 1006    Campground  | 11        |
| Section 1007    Church/Community Building   | 11        |
| Section 1008    Construction/ Building Contracting                                    | 11        |
| Section 1009    Contractor's Storage Yard   | 11        |
| Section 1010    Cottage Industry  | 11        |
| Section 1011    Dwelling, Multi-Family  | 12        |
| Section 1012    Dwelling, Single Family   | 12        |
| Section 1013    Dwelling, Two-Family  | 12        |
| Section 1014    Farm  | 12        |
| Section 1015    Forestry/Woodlot  | 12        |
| Section 1016    Home Occupation   | 12        |
| Section 1017    Inn (Conversion)  | 12        |
| Section 1018    Inn (New Construction)  | 13        |
| Section 1019    Manufacturing   | 13        |
| Section 1020    Manufactured Housing  | 13        |
| Section 1021    Non-Conforming Structure (Voluntary Demolition/Removal & Replacement) | 13        |
| Section 1022    Non-Conforming Use Change or Expansion                                | 13        |
| Section 1023    Office Building   | 14        |
| Section 1024    Recreation Facility   | 14        |
| Section 1025    Recreational Vehicles   | 14        |
| Section 1026    Repair Shop   | 14        |
| Section 1027    Rest/Convalescent Home  | 14        |
| Section 1028    Restaurants   | 14        |
| Section 1029    Retail Business   | 14        |
| Section 1030    School  | 15        |
| Section 1031    Service Business  | 15        |
| Section 1032    Telecommunications Facilities   | 15        |
| Section 1033    Warehouse/ Storage Facility   | 15        |
| <b>TABLE 1 - USES BY DISTRICT OR ZONE</b>   | <b>16</b> |
| <b>ARTICLE 11 - ADMINISTRATION AND ENFORCEMENT</b>                                    | <b>17</b> |
| Section 1101    Enforcement Officer   | 17        |
| Section 1102    Enforcement and Penalty   | 17        |
| Section 1103    Zoning Board of Adjustment  | 17        |
| 1103.1    The Zoning Board of Adjustment  | 17        |
| 1103.2    Rules for Proceedings   | 18        |
| Section 1104    Variance  | 18        |
| 1104.1    Appeal  | 18        |
| 1104.2    Authorizing   | 19        |
| Section 1105    Building Permits  | 19        |
| <b>ARTICLE 12 - MISCELLANEOUS PROVISIONS</b>  | <b>19</b> |
| Section 1201    Severability Clause   | 19        |
| Section 1202    Effective Date  | 19        |
| Section 1203    Amendments  | 19        |
| Section 1204    Validity  | 19        |

|  |    |
|--|----|
| <b>ARTICLE 13 - PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES</b>          | 19 |
| Section 1301    Purpose and Intent   | 19 |
| Section 1302    Applicability  | 20 |
| Section 1303    Definitions  | 20 |
| Section 1304    District Regulations   | 22 |
| Section 1305    Use Regulations  | 22 |
| Section 1306    Dimensional Requirements                                     | 23 |
| Section 1307    Performance and Design Standards                             | 24 |
| Section 1308    Monitoring and Maintenance                                   | 26 |
| Section 1309    Abandonment or Discontinuation of Use                        | 27 |
| Section 1310    The following are exempt from the provisions of this Article | 27 |
| <b>ARTICLE 14 - RECREATION VEHICLES</b>                                      | 28 |
| Section 1401    Storage  | 28 |
| Section 1402    120 Day Permit   | 28 |
| Section 1403    Temporary Place of Occupancy                                 | 28 |
| <b>ARTICLE 15 - HISTORIC DISTRICT</b>  | 28 |
| Section 1501    Purposes   | 28 |
| Section 1502    Historic District  | 28 |
| Section 1503    Historic District Commission                                 | 29 |
| Section 1504    Requirement for Certificate of Approval                      | 29 |
| <b>ARTICLE 16 – WETLANDS</b>   | 31 |
| Section 1601    Purpose and Intent   | 31 |
| Section 1602    Definitions  | 32 |
| Section 1603    Wetlands   | 34 |
| 1603.1    Delineation of Wetland Boundaries                                  | 34 |
| 1603.2    Wetlands Incorrectly Delineated                                    | 34 |
| Section 1604    Buffers  | 35 |
| 1604.1    Wetland Buffers  | 35 |
| 1604.2    Surface Water Buffers  | 35 |
| Section 1605    Permitted Uses in Wetlands and Wetland Buffers               | 35 |
| Section 1606    Prohibited Uses in Wetlands and Wetland Buffers              | 36 |
| Section 1607    Uses Requiring a Special Use Permit                          | 37 |
| Section 1608    Standards for Granting a Special Use Permit                  | 37 |
| 1608.1    Administration   | 37 |
| 1608.2    Application Requirements   | 37 |
| 1608.3    Minor Adjustments  | 38 |
| 1608.4    Major Adjustments  | 39 |
| Section 1609    Enforcement  | 40 |
| Section 1610    Special Provision – Exemplary Wetlands                       | 40 |
| <b>ARTICLE 17 - STEEP SLOPES AND CRITICAL ELEVATIONS</b>                     | 40 |
| Section 1701    Purpose and Intent   | 40 |
| Section 1702    Definitions  | 41 |
| Section 1703    Uses Requiring a Steep Slope Permit                          | 41 |
| Section 1704    Standards for Granting a Steep Slopes Permit                 | 42 |
| 1704.1    Administration   | 42 |
| 1704.2    Application Requirements part 1                                    | 42 |
| 1704.3    Applicant Requirements part 2                                      | 43 |
| Section 1705    Timber Harvesting  | 43 |
| Section 1706    Town Liability   | 43 |
| Section 1707    Enforcement  | 43 |

|  |               |
|--|---------------|
| <b>ARTICLE 18 - OPEN SPACE CONSERVATION SUBDIVISION</b>        | <b>44</b>     |
| Section 1801    Purpose  | 44            |
| Section 1802    Objectives                                     | 44            |
| Section 1803    Definitions                                    | 45            |
| Section 1804    Applicability                                  | 46            |
| 1804.1    Ten Acre Minimum                                     | 46            |
| 1804.2    Required for Special Land Features                   | 46            |
| 1804.3    Phased Subdivision Applications                      | 46            |
| Section 1805    Density  | 47            |
| Section 1806    Ownership and Protection of Conservation Areas | 47            |
| 1806.1    Conservation areas                                   | 47            |
| 1806.2    Conveyances of land to the Town or State             | 47            |
| 1806.3    General public access                                | 47            |
| Section 1807    Conservation Area Location and Design          | 48            |
| 1807.1    A minimum of 50% of the property                     | 48            |
| 1807.2    Evaluating acceptability                             | 48            |
| Section 1808    Site Planning Process                          | 48            |
| 1808.1    Informal Discussion                                  | 48            |
| 1808.2    Conceptual Design Review                             | 48            |
| Section 1809    Final Plat Review                              | 49            |
| <br><b>ARTICLE 19 - FLOODPLAIN MANAGEMENT</b>                  | <br><b>50</b> |
| Section 1901    Purpose  | 50            |
| Section 1902    Establishment                                  | 50            |
| Section 1903    Permits  | 50            |
| Section 1904    Construction Requirements                      | 50            |
| Section 1905    Water and Sewer Systems                        | 51            |
| Section 1906    Certification                                  | 51            |
| Section 1907    Other Permits                                  | 51            |
| Section 1908    Watercourses                                   | 51            |
| Section 1909    Special Flood Hazard Areas                     | 52            |
| Section 1910    Variances and Appeals                          | 53            |
| Section 1911    Definitions                                    | 54            |
| <br><b>ARTICLE 20 - WORKFORCE HOUSING</b>                      | <br><b>57</b> |
| Section 2001    Purpose  | 57            |
| Section 2002    Authority                                      | 57            |
| Section 2003    Definitions                                    | 57            |
| Section 2004    Applicability                                  | 57            |
| Section 2005    Eligibility Requirements                       | 58            |
| Section 2006    Assurance of Continued Affordability           | 59            |
| Section 2007    Administration, Compliance and Monitoring      | 59            |
| <br><b>ARTICLE 21 - SMALL WIND ENERGY SYSTEMS</b>              | <br><b>60</b> |
| Section 2101    Purpose  | 60            |
| Section 2102    Definitions                                    | 60            |
| Section 2103    Procedure for Review                           | 61            |
| Section 2104    Standards                                      | 62            |
| Section 2105    Abandonment                                    | 64            |
| Section 2106    Violation                                      | 64            |
| Section 2107    Penalties                                      | 65            |
| <br><b>ARTICLE 22 – GROUNDWATER PROTECTION</b>                 | <br><b>65</b> |
| Section 2201    Authority                                      | 65            |
| Section 2201    Purpose  | 65            |
| Section 2203    Groundwater Protection District                | 65            |
| Section 2204    Exemptions                                     | 65            |

|              |   |    |
|--------------|---|----|
| Section 2205 | Applicability                                     | 66 |
| Section 2206 | Permitted Uses                                    | 66 |
| Section 2207 | Prohibited Uses                                   | 66 |
| Section 2208 | Uses Requiring a Special Use Permit               | 67 |
| 2208.1       | Granting Special Use Permit                       | 67 |
| 2208.2       | Prohibited Uses                                   | 67 |
| 2208.3       | Performance Guarantee                             | 67 |
| 2208.4       | Required Plans                                    | 67 |
| 2208.5       | Special Use Permit Application                    | 67 |
| 2208.6       | Public Hearing                                    | 68 |
| 2208.7       | Transmission of Copies                            | 68 |
| 2208.8       | Time Limitation                                   | 68 |
| 2208.9       | Performance Standards                             | 68 |
| 2208.10      | Reimbursement of Expenses                         | 68 |
| 2208.11      | Waivers   | 68 |
| Section 2209 | Existing Nonconforming Uses                       | 69 |
| Section 2210 | Performance Standards                             | 69 |
| Section 2211 | Spill Prevention, Control and Countermeasure Plan | 70 |
| Section 2212 | Maintenance and Inspection                        | 71 |
| 2212.1       | Performance Standards                             | 71 |
| 2212.2       | Inspections for Performance Standards             | 71 |
| 2212.3       | Fire Department Inspections                       | 71 |
| 2212.4       | Fee for Compliance Inspections                    | 71 |
| Section 2213 | Definitions                                       | 71 |
| Section 2214 | Relationship Between State and Local Requirements | 72 |
| Section 2215 | Saving Clause                                     | 72 |
| Section 2216 | Effective Date                                    | 73 |
|              | Map   | 74 |

**Town of Effingham  
Zoning Ordinance**

**ARTICLE 1 PREAMBLE AND TITLE**

**Section 101 Preamble**

It is the purpose of this Ordinance to promote the health, safety, prosperity and general welfare of the citizens of Effingham; to buffer the town's historic districts and maintain their rural character; and to retain the Town's community character including its beauty, its rural charm, its freedom of movement and its overall good will. This ordinance will enable the citizens of Effingham to preserve their community as a beautiful, wholesome and healthy place for themselves, their children and future generations to live, work, and play. Therefore, in pursuance of authority conferred by New Hampshire Revised Statutes Annotated, Chapter 674, Section 16, for the purpose of promoting the health, safety, and general welfare of the inhabitants of the Town of Effingham, now therefore the following ordinance is hereby enacted by the voters of the Town of Effingham, New Hampshire.

**Section 102 Title**

This ordinance shall be known and may be cited as the "Zoning Ordinance of the Town of Effingham, New Hampshire, 2000."

**Section 103 Land Use Limited to Specific Listed Uses**

No structure shall be constructed, erected, placed, or altered and no land use commenced or continued within the Town of Effingham except as specifically or by necessary implication authorized by this Ordinance and having first secured a building permit from the enforcement officer.

**ARTICLE 2 EXISTING USES**

**Section 201 Existing Uses**

Any lawful building, or use of a building, or land, or parts thereof in existence at the time of the adoption of this Ordinance, or of any amendment thereto, may be continued although such building or use does not comply with the provisions of this Ordinance. Such building or use shall be lawful if there was compliance with existing regulations in effect. This Zoning Ordinance shall not apply to existing structures or to the existing use of any building or land. It shall, however, apply to any alteration of an existing structure or for a use that is substantially different from the existing use or from the existing structure prior to alteration. Nonconforming uses and structures shall be subject to the provisions of Article 7, Non-Conforming Uses and Structures.

**ARTICLE 3 DEFINITIONS**

**Section 301 Interpretation**

The definitions contained in this ordinance are to be considered in reference to the general purpose and intent of this ordinance as outlined above.

**Section 302 Definitions**

***Accessory Building/Use:*** A detached building or use which is located on the same lot as the principal building, not for human habitation, and the use of which is incidental and subordinate to that of the principal use.

**Aggregate Extraction:** Any activity related to the removal of sand, gravel, loam, or stone for commercial purposes.

**Automobile Service:** Any building or premises used primarily for the retail sale of gasoline and lubricants.

**Automobile and Truck Repair:** Any building or premises used primarily for the purpose of repairing, rebuilding, reconstructing, and servicing of automobiles and trucks.

**Bed and Breakfast:** A private single-family detached residential building containing, in addition to living accommodations for the resident manager, no more than seven (7) rooms which provide, for compensation, lodging, bathroom facilities and breakfast to overnight patrons only and for no longer than two (2) consecutive weeks.

**Building:** Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind. Aside from "Accessory Buildings", all buildings must have a permanent foundation.

**Campgrounds:** A parcel of land with two or more specific sites that has provision for the pitching of a tent or the parking of any recreational vehicle or trailer for use as sleeping quarters on a temporary basis for recreation or education.

**Church/Community Building:** A building used as a place of worship maintained by a religious group or any other building used by the members of the community for social, cultural, or recreational purposes. Parking will be provided on-site; the number of spaces provided will be based on the building's capacity.

**Construction/Building Contracting:** An establishment engaged in aspects of the building trades. Typical examples: excavation, foundations, carpentry, electrical and plumbing.

**Contractor Storage Yard:** Outside storage of owner owned or leased supplies and equipment used in off-site business. Typical examples are supplies, vehicles, and equipment.

**Conversion:** A change of use from one permitted use to another permitted use. A conversion requires a permit from the Zoning Officer.

**Cottage Industry:** A small-scale industry involving the manufacturing or assembly of goods at home, in an accessory building of the home, or on its own lot which has no more than five (5) non-family employees. Typical uses might include a woodworking, printing, window manufacturing, or blacksmith shop.

**Dwelling, Multi-Family:** A building, which contains three or more dwelling units.

**Dwelling, Single Family:** A building containing only one dwelling unit designed as a residence for one family.

**Dwelling, Two Family:** A building, which contains two dwelling units.

**Dwelling Unit:** A residential unit intended for use by one household or family.

**Establishment:** An economic unit, generally at a single physical location, wherein business is conducted or services or industrial operations performed. Generally, the physical location is a building or part therein.

**Farm:** As defined by RSA 21:34-a



**Forestry/Woodlot:** A parcel or tract of land primarily used for the growth and harvesting of trees or tree products.

**Foundation:** A base constructed to support any building or structure including but not limited to footings, floating foundation, piles, caissons.

**Frontage:** The width of a lot measured along the line of a street where the lot meets the right-of-way.

**Gross Floor Area:** The sum of the areas of the several floors of a building as measured from the exterior faces of their walls, including areas used for human occupancy in finished basements and penthouses, attached porches and decks, and unobstructed areas of an attic having a minimum height of 6'-6" at its highest point and a minimum height of 5'-0" at its lowest point. It shall include the horizontal area at each floor level devoted to interior stairwell and elevator shafts. It shall not include outside steps, stairs, bulkheads, trashcan enclosures and chimneys, or unfinished areas of basements, or other buildings on the same lot.

**Home Occupation:** Any use of a professional or service character that is either carried out in the home or in an accessory building of the home carried out by a member or members of the family and no more than two (2) non-family employees. The use must be clearly secondary to the dwelling use for living purposes and not change the character thereof. A "home occupation" does not involve any outside storage except that incidental to the home, no outside display of goods, and where no on-street parking exists must provide off-street parking in the amount of one (1) space for every 3 expected patrons or customers at any one time. In-home day care service may qualify as a home occupation.

**Inn (Conversion):** An existing building containing no more than 20 guest rooms which are rented to customers on a temporary basis but without individual kitchen units.

**Inn (New Construction):** A building containing no more than 20 guest rooms which are rented to customers on a temporary basis but without individual kitchen units.

**Lot of Record:** A single lot of record which, at the effective date of this Ordinance, does not meet the minimum lot area, minimum lot area per dwelling unit, or minimum frontage requirements of the district in which it is located. It is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

**Manufacturing:** Any process whereby the nature, size, shape, finish, or appearance of articles is changed or where articles are assembled or packaged for commercial purposes.

**Manufactured Housing:** Any building built in compliance with the US Department of Housing and Urban Development (HUD) Manufactured Home Construction and Safety Standards (24 C.F.R. 3280). A manufactured home is transportable in one or more sections, which, in its 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 with a permanent foundation when connected to required utilities, which include plumbing, heating and electrical systems contained herein.

**Manufactured Housing Park:** Land on which two or more manufactured houses are parked and occupied for long-term living purposes, regardless of whether a charge is made for such accommodations. A park could be in either single or common ownership with lots offered on a rental basis.

**Mean High Water Level:** Line of shore running parallel to the water as defined by the NH Department of Environmental Services

**Office Building:** A building used primarily for conducting the affairs of a business or profession.

**Recreation Facility:** Any room or building or outdoor facility set aside for public or private recreational use, which shall be limited to the following: dance hall, bowling alley, golf driving range, golf course, tennis courts, skating rink, ball fields, equestrian facilities, swimming facilities, or health club.

**Recreation Vehicle** means any of the following:

a) Travel Trailer – shall mean a vehicular, portable structure built on a chassis, designed as a temporary dwelling for travel, recreation and vacation use having a body main frame area of no greater than 400 square feet.

The allowable width is not more than eight and a half (8 ½) feet. This definition does not include any trailer or vehicle for which a special permit is required for transportation along any roadway, in accordance with RSA 266:24.

b) Tent/Camper – shall mean a vehicular portable structure that folds open as a temporary dwelling intended for travel, recreation, and vacation use.

c) Pick-up Camper – shall mean a structure mounted or to be mounted on a truck type chassis designed as a temporary dwelling intended for travel, recreation, and vacation use.

d) Motor home/Van/Coach/Converted Bus – shall mean a vehicle with its own chassis designed as a temporary dwelling to be used for travel, recreation, and vacation use.

**Repair Shop:** A building used for the repair of small engines, appliances, radios, televisions, office equipment, shoes, or any similar use.

**Rest/Convalescent Home:** A building, which offers personal care (including dressing, eating and health-related care) and shelter for short, intermediate, and long-term durations.

**Restaurants:** An establishment where food and drink are prepared served and consumed either within the principal building or outside the confines of the restaurant. This does not include drive-thru or drive-in establishments.

**Retail Business:** Establishments which are engaged in the selling of goods or merchandise to the general public for personal or household consumption. The goods or merchandise to be sold may include those, which are bought, or those manufactured or assembled on-site. Examples of Retail Businesses include antique stores, specialty, gift, and arts and crafts shops, shoe and clothing stores, art galleries, furniture stores, and country stores.

**School:** A building or area in which persons are instructed in arts, science, languages, or any kind of learning or training.

**Service Business:** An establishment, which typically offers assistance or facilities to individuals, businesses, or other enterprises. Typical uses might include banks, laundries, day care centers, or real estate services, but shall not include heavy industrial uses.

**Street:** A public highway as defined in RSA 229:1 except a Class VI or discontinued highway; or a private road within a subdivision as platted and recorded in the Carroll County Registry of Deeds, including the full width of the right-of-way.

**Structure:** Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground.

**Warehouses and Storage Facilities:** A building for storage purposes only; containing no office, assembly, repair, or other incidental facilities.

## ARTICLE 4 DISTRICTS, LOT REQUIREMENTS AND MAPS

### **Section 401 Establishing Districts**

The Town of Effingham is hereby divided into the following districts as shown on the official zoning map:

|     |   |
|-----|---|
| R/A | Rural/Agricultural  |
| VOD | Village Overlay Districts, otherwise referred to as Village Districts |
| HD  | Historic Districts  |
| PLD | Province Lake District  |

### **Province Lake District**

#### **Purpose:**

The purpose of this district is to reflect the historical development pattern of lakeshore property located within 300 feet of the natural mean high water level of Province Lake and preservation of the quality of the water in Province Lake. In addition, development restrictions are intended to preserve the environment, aesthetics, wildlife habitat, and natural beauty of the waterfront area and to protect the public health and welfare by preventing overcrowding of the shore land.

### **Section 402 Lot requirements**

|  | Rural<br>Agricultural | Village<br>District | Historic<br>District | Province<br>Lake<br>District | Open Space<br>Conservation<br>Subdivision |
|--|-----------------------|---------------------|----------------------|------------------------------|---|
| <b>Minimum Lot Size (acres)</b>  | 2                     | 2                   | 2                    | 2                            | N/A                                       |
| <b>Minimum Frontage (feet)</b>   | 200                   | 200                 | 200                  | 200                          | 75  |
| <b>Water Frontage: All lots having access to water shall have a minimum of one hundred and fifty (150) feet of frontage.</b> |                       |                     |                      |                              |   |
| <b>Minimum Structure Setbacks From Property Line (feet)</b>  |                       |                     |                      |                              |   |
| <b>Front</b>   | 50                    | 35                  | 35                   | 30                           | 20  |
| <b>Side</b>  | 30                    | 25                  | 25                   | 20                           | 20  |
| <b>Rear</b>  | 50                    | 50                  | 50                   | 30                           | 20  |
| <b>Shoreline</b>   |                       |                     |                      | 50                           | 50  |

#### 402.1 Residential Accessory Building Exception

The accessory buildings on a residential lot shall comply with the minimum setback requirements, with the following exception:

One (1) accessory building as defined in Section 302 may be located in a required side setback or rear setback provided the accessory building:

- (1) Is not located in a front setback; and
- (2) Is not closer than 15 feet to the property line; and
- (3) Does not exceed 100 square feet in area; and
- (4) Does not exceed 14 feet in height; and
- (5) Is used for storage.

### **Section 403 Zoning and Steep Slopes Maps**

The districts as established in Section 401 are shown on maps on file in the offices of the Town of Effingham and are a part of this Ordinance. There is a map entitled "Town of Effingham Zoning Map," which has been identified by the signatures of the members of the Planning Board and the date of adoption and any further amendments. There is also a Steep Slopes/Erosion Map on file in the offices of the Town.

## **ARTICLE 5 PERMITTED USES**

### **Section 501 Permitted Uses**

Permitted Uses are only those uses that are specifically listed under Permitted Uses in TABLE 1 and are allowed only if the standards established within this ordinance are met. Permitted uses are subject to Article 6. "General Provisions."

## **ARTICLE 6 GENERAL PROVISIONS**

The following shall apply to all districts except where listed.

### **Section 601 Conflicts**

Where there is a conflict in the application of provisions of this zoning ordinance, the more restrictive provision shall apply except for delineation of the Historic Districts, delineation of the Village Districts and the Aquifer Overlay.

### **Section 602 Reduction of Lot Area**

When a lot is subdivided, no resulting lot shall be so reduced that the area, yards, frontage, or other requirements of these regulations shall be smaller than herein prescribed for each district. The provisions of this section shall not apply when a portion of a lot is taken for a public purpose.

### **Section 603 Yards on Corner Lots**

Any yard adjoining a street shall be considered a front yard for the purposes of these regulations.

### **Section 604 Abandonment of Structures and Excavations**

- 604.1 Within six months after work on excavation for a building or use has begun, the excavation thus remaining shall be covered, such as with building construction or filled to normal grade by owner, and piles of unused or excess excavated material are to be removed.
- 604.2 Within six months after a permanent or temporary building or structure has been destroyed, demolished or abandoned, all structural materials shall be removed from the site and the excavation thus remaining shall be covered over as with building construction or filled to normal grade by the owner.
- 604.3 No structure in the process of completion or demolition and no ruins from fire or other casualty shall be abandoned in a hazardous or disorderly state. Such structure shall be considered to be abandoned when work to remedy the improper condition shall not have been initiated within 90 days of the occasion of the casualty or, if initiated work shall have been discontinued with the owner's consent for 30 or more consecutive days.

### **Section 605 Motor Vehicle/Trailer Storage**

- 605.1 A maximum of two unregistered motor vehicles that are no longer intended or in condition for legal use on the highways may be stored on any lot, as described in RSA 236:112.

605.2 A maximum of two unregistered travel trailers, as defined in RSA 259:113, may be stored on any lot.

### **Section 606 Building Height**

The maximum height of any building shall be thirty-five (35) feet, with determination being the vertical distance from the average finished grade surrounding the building to a point midway between the highest and lowest points of the highest roof. Silos, barns, and church towers are exempted, as are residential television and radio antennas.

### **Section 608 Province Lake District Performance Standards**

The Comprehensive Shore land Protection Act, RSA Chapter 483-B, shall apply to all shore land property. Permits required pursuant to this act must be obtained from the New Hampshire Department of Environmental Services. Note: In the Province Lake District, any remodeling or expansion of an existing structure within fifty (50) feet of the shoreline requires a Shore land Protection Waiver from New Hampshire Department of Environmental Services and a building permit from the Town of Effingham.

## **ARTICLE 7 NON-CONFORMING USES AND STRUCTURES**

### **Section 701 Definition**

Any lawful structure or use of a building in existence at the time of the adoption of this Ordinance, or of any amendment hereto, may be continued even though such structure or use does not comply with the provisions of this Ordinance. Such structures shall be known as "Non-Conforming Structures" and such uses as "Non-Conforming Uses."

### **Section 702 Change or Expansion of Non-Conforming Use**

702.1 Upon approval of a Special Exception permit by the Zoning Board of Adjustment (see Article 10 Non-Conforming Use Change or Expansion), a nonconforming use may be changed or expanded upon a finding by the ZBA that such a change will bring the use into closer conformance with the provisions of this Ordinance, or will make the nonconforming aspect no worse. A use will be deemed to have been brought into closer conformance with the provisions of this Ordinance, or have been made no worse, if it is less or no more intense than the previous nonconforming use, as measured by volume and type of traffic expected to be generated, size of building or structure housing the use, number of potential customers, number of bedrooms, or similar measures of intensity of use. The ZBA may approve, approve with conditions, or disapprove requests under this section.

702.2 No non-conforming use shall be enlarged or extended in excess of twenty percent (20%) of the gross floor area of the principal building existing at the time the non-conformance commenced. The expanded 20% use shall comply with all other provisions of this Ordinance, including but not limited to dimensional requirements, sign regulations, and off-street parking requirements.

### **Section 703 Abandonment of Non-Conforming Use or Structure**

If a non-conforming use is changed to a conforming use and continued for a period of four (4) months or more, such change shall constitute the abandonment of the prior non-conforming use. A non-conforming use shall be presumed to be abandoned if the use has been discontinued for a period of two years or more. A determination shall in the first instance be made by the Enforcement Officer, and any person aggrieved may appeal that decision to the Zoning Board of Adjustment. Rights vested by applicable law shall not be affected.

#### **Section 704    Damage to a Non-Conforming Structure**

If a non-conforming structure is damaged by fire, explosion or other catastrophe, the building may be rebuilt and restored not greater in size or floor space than the original structure and shall be in the original location of the original structure except as provided in Section 706. Restoration of the structure must occur within two years of the date of damage. Otherwise the non-conforming structure shall be presumed to have been abandoned, except as to rights vested by law.

#### **Section 705    Damage to a Non-Conforming Use**

If a building housing a non-conforming **use** is damaged by fire, explosion or other catastrophe, it may be rebuilt or restored provided it is limited to the original size and floor space utilized by the non-conforming use. Restoration of the structure must occur within two years of the date of damage. Otherwise, the non-conforming use shall be presumed to have been abandoned.

#### **Section 706    Expansion of a Non-Conforming Structure**

A structure that is non-conforming as to one or more dimensional requirements (setbacks and/or height limit) may be enlarged or extended up to 20% for non-residential structures and up to 30% for residential structures of the gross floor area existing at the time the non-conformance commenced. For example, a house which is too close to the road and does not comply with the front yard requirement may be extended parallel to the road in an amount equal to 30% of the gross floor area of the house. The extension, however, cannot violate a side yard or rear yard requirement.

If enlargement or extension includes additional bedrooms, evidence of compliance with the State of New Hampshire Water Supply and Pollution Control Regulations must be submitted to the Enforcement Officer.

#### **Section 707    Lot of Record**

A "lot of record" shall be a lot which is part of a subdivision approved by the Effingham Planning Board and recorded in the Carroll County Registry of Deeds or described by meets and bounds in a deed recorded in the Carroll County Registry of Deeds prior to the enactment of this Ordinance (March 2000). A lot of record may be used for the uses permitted in the zoning ordinance in the district within which the property is located so long as the lot satisfies the following:

- 1) The Lot must have frontage, as defined by this ordinance, and said frontage must be capable of providing sufficient access for emergency vehicles.
- 2) The lot must be capable of supporting a well and septic system, designed and installed in compliance with all then-current Town and State of New Hampshire Water Supply and Pollution Control Regulations.
- 3) All structures and improvements must comply with the setback requirements contained in this ordinance.
- 4) A lot of record may be used for the location of a single-family dwelling, provided that the lot of record complies with the terms of this section and all necessary state and local permits can be obtained.

#### **Section 708    Lot Density**

For non-conforming lots of one (1) acre or less, the total area of all existing and proposed structures shall be limited to 10% of the gross lot area. 'Area of a structure' in this section shall mean that part of the structure which covers the ground under it (footprint), including all deck, porch, and roof overhangs. All other requirements of this ordinance shall be met.

**Section 709 Voluntary Demolition/Removal and Replacement of Non-Conforming Structure**

Upon approval of a Special Exception permit by the Zoning Board of Adjustment and acquisition of a permit from the enforcement officer, a non-conforming structure may be voluntarily demolished or removed and the structure may be rebuilt according to the Use Specific Conditions noted in Article 10. Otherwise the voluntarily demolished/removed non-conforming structure shall be presumed to have been abandoned.

**ARTICLE 8 MANUFACTURED HOUSING**

**Section 801 Intent**

In order to allow for a broad range of housing types within the Town, manufactured housing for single-family dwelling units is allowed as a permitted use on individual lots in the Rural/Agricultural District. Such manufactured housing located on individual lots shall comply with lot size, frontage requirements, and other reasonable controls that conventional single family housing in the same District must meet. Manufactured housing will only be permitted that is in compliance with the US Department of Housing and Urban Development (HUD) Manufactured Housing Construction and Safety Standards (24 C.F.R. 3280) and that is located on a permanent foundation. All manufactured housing must meet the most recent HUD standards for the year in which the manufactured housing is placed on a lot.

**ARTICLE 9 SPECIAL EXCEPTIONS**

**Section 901 R.S.A. 674:33 IV.**

“A local zoning ordinance may provide that the zoning board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained in the ordinance.”

**Section 902 Noxious Use**

Any use that may be obnoxious or injurious by reason of production or emission of odor, dust, smoke, refuse matter, fumes, noise, vibration or similar conditions, or that is dangerous to comfort, peace, health, or safety of the community is prohibited.

**Section 903 General Provisions**

The Zoning Board of Adjustment may grant permits for uses permitted as special exceptions as illustrated in Table 1 “Permitted Uses by District or Zone” based on the following general provisions, and where applicable, the provisions specific to the proposed use as outlined below.

**Section 904 Conditions for Approval**

The Zoning Board of Adjustment in considering an application for a special exception must consider the following general conditions:

- A. The specific site of the proposal is in an appropriate location for that use.
- B. The proposed use will not reduce property values in the district due to incompatible land use.
- C. The proposed use will not harm the community or neighborhood.

- D. Adequate facilities will be provided which are appropriate to the proposed use.
- E. Adequate on-site parking is to be provided appropriate to the proposed use.
- F. The proposed use will not result in any nuisance or hazard as outlined in the Section 902 "Obnoxious Use" above.
- G. There is adequate area for safe and sanitary sewage disposal.
- H. There are no valid objections from abutters based on demonstrable fact.
- I. The installation of monitoring wells or other appropriate environmental monitoring systems may be required.

**ARTICLE 10    CONDITIONS FOR APPROVAL OF PERMITTED USES  
(See Table 1: Uses by District or Zone)**

**Note: The development or change or expansion of use of tracts for nonresidential uses or multifamily dwelling units is also governed under the Town Site Plan Review Regulations.**

**Section 1001    Accessory Building/Use**

**Section 1002    Aggregate Extraction**

Also regulated by the State of New Hampshire under RSA 155-E:2.

**Section 1003    Automobile Service Station**

The following site requirements and improvements apply:

- (a) Operating hours are to be permitted between 6:00 AM and 11:00 PM seven days a week.
- (b) Minimum lot size is to be 2 acres.
- (c) Pumps are to be located no closer than fifteen (15) feet to any building or twenty-five (25) feet to the right-of-way of any street.
- (d) Each station shall provide a vegetative buffer ten (10) feet wide along the lot sides and rear.
- (e) All areas utilized by vehicular traffic, either stationary or in motion, must be paved.
- (f) There shall be one free standing not internally illuminated sign permitted per station which does not exceed twelve (12) feet in height above ground.
- (g) One portable sign is also permitted not to exceed twelve (12) square feet in area, not to be internally illuminated and to be placed in a location, which does not obstruct vehicular sight lines.
- (h) Adequate room for snow storage shall be provided.
- (i) A used oil container for storage is to be approved by the ZBA and is to meet applicable state regulations.

**Section 1004    Automobile and Truck Repair Station**

The following site requirements and improvements apply:

- (a) Operating hours are to be permitted between 7:00 AM and 8:00 PM seven days a week.
- (b) Minimum lot size is to be 2 acres.
- (c) Each station shall provide a vegetative buffer ten (10) feet wide along the lot sides and rear.
- (d) Structures are to be designed so as to minimize noise pollution.
- (e) There shall be one free standing not internally illuminated sign permitted per station which does not exceed twelve (12) feet in height above ground.



- (f) One portable sign is also permitted not to exceed twelve (12) square feet in area not internally illuminated and to be placed in a location, which does not obstruct vehicular sight lines.
- (g) Adequate room for snow storage shall be provided.
- (h) A used oil container for storage is to be approved by the ZBA and is to meet all applicable state requirements.

#### **Section 1005 Bed and Breakfast**

#### **Section 1006 Campground**

- (a) A minimum of 600 square feet shall be provided for each tent site and a minimum of 1,000 square feet shall be provided for each recreational vehicle and trailer campsite, with or without connection to an approved sewage disposal system (RSA 216-I: 3). Within campgrounds, all roads shall be well drained, graveled, or hard surfaced, and maintained in good condition. All two-way roads shall be a minimum width of twenty (20) feet, and all one-way roads shall be a minimum of twelve (12) feet. Water supply, garbage disposal, and toilet facilities shall conform to the State of New Hampshire sanitary laws and regulations. Management headquarters, recreational facilities, showers, laundry facilities, and other uses and structures customarily incident to operation of a campground are permitted as accessory uses. No tent, tent trailer, travel trailer, motorized camper, pick-up camper, or pick-up coach shall be used as permanent year-round residence.
- (b) The minimum road frontage shall be 200 feet.
- (c) The minimum setback from the nearest street shall be 100 feet.
- (d) The minimum setback for side and rear yards shall be 100 feet.
- (e) A minimum of 20 contiguous acres, not including wetlands and steep slopes, is required.

#### **Section 1007 Church/Community Building**

#### **Section 1008 Construction/ Building Contracting**

#### **Section 1009 Contractor's Storage Yard**

- (a) The storage yard is conducted and carried on by the owner or leasee of the property and shall be incidental to a Construction/Building Contracting business carried on by the owner or leasee.
- (b) One (1) small, externally illuminated sign is permitted, not larger than six (6) square feet.
- (c) Fencing or a vegetative buffer shall be required to minimize impact on abutting property.
- (d) There is to be provided adequate off-street parking for all employees and customers and for delivering and shipping goods other than by customary home delivery services.
- (e) Noise and light pollution shall be kept to a minimum and lights shall be white, non-sodium, and shielded so as not be a distraction to abutters.

#### **Section 1010 Cottage Industry**

- (a) It is conducted and carried on by the owner or leasee of the property and not more than five (5) non-family employees.
- (b) One (1) small, externally illuminated sign is permitted, not larger than six (6) square feet.
- (c) All work is to be contained within the structure.
- (d) There is to be no production or work, which increases the noise level, involves the use of water, or produces fumes beyond the limits of the lot lines.
- (e) There is to be no unreasonable outside storage of goods or materials, which can be seen from abutting properties or roads.
- (f) There is to be no installation or use of mechanical or electrical equipment or hazardous materials that would not normally be part of a domestic household without the written approval of the Fire Chief.

- (g) There is to be provided adequate off-street parking for all employees and customers and for delivering and shipping goods other than by customary home delivery services.
- (h) The cottage industry located within a dwelling unit is limited in size to not more than 50% of the floor area of that unit.
- (i) The cottage industry located on its own lot shall be limited in size to not more than 2,000 square feet per floor.
- (j) Floor area is defined as the total horizontal area of a building not including cellars, attics, porches, etc.

#### **Section 1011 Dwelling, Multi-Family**

- (a) Parking shall be provided on-site at a minimum of two (2) spaces per residential unit, and adequate on-site parking shall be provided for visitors;
- (b) Adequate space shall be provided for the removal/storage of snow;
- (c) Adequate lighting shall be provided and shall be white, non-sodium and shielded so as not to be a distraction to abutters.
- (d) There shall be a maximum of 4 dwelling units in any multi-family dwelling.
- (e) The minimum area of the lot shall be equal to 1.25 acres multiplied by the number of individual single-family units in the building.

#### **Section 1012 Dwelling, Single Family**

Only one dwelling is allowed on a lot.

#### **Section 1013 Dwelling, Two-Family**

- (a) Parking shall be provided on-site at a minimum of two (2) spaces per residential unit, and adequate on-site parking shall be provided for visitors;
- (b) Adequate space shall be provided for the removal/storage of snow;
- (c) Adequate lighting shall be provided and shall be white, non-sodium and shielded so as not to be a distraction to abutters;
- (d) The minimum area of the lot shall be equal to 1.25 acres multiplied by the number of individual single-family units in the building.

#### **Section 1014 Farm**

- (a) Farms shall have a minimum lot size of two (2) acres.
- (b) A farm shall adhere to all zoning regulations of the district in which it is located.
- (c) A farm will adhere to the current Best Management Practices for Agriculture in New Hampshire as published by the New Hampshire Department of Agriculture, Markets, and Food.
- (d) On-site signage is permitted as follows:
  - (i) A main sign, externally illuminated, which may be two (2) sided, not to exceed twelve (12) square feet per side.
  - (ii) Two (2) available products signs which may be two (2) sided, not to exceed eight (8) square feet per side, and may be free standing or affixed to the main sign.
  - (iii) Agricultural membership signs, including but not limited to: Farm Bureau, Tree Farm and Farm of Distinction.
  - (iv) Two (2) temporary signs, for seasonal and special events, such as "Pick Your Own" and "Open Farm Days", not to exceed eight (8) square feet per side.

#### **Section 1015 Forestry/Woodlot**

#### **Section 1016 Home Occupation**

#### **Section 1017 Inn (Conversion)**

**Section 1018 Inn (New Construction)**

- (a) One (1) small, externally illuminated sign is permitted, not larger than six (6) square feet.
- (b) Adequate space shall be provided for the removal/storage of snow.
- (c) Adequate lighting shall be provided and shall be white, non-sodium and shielded so as not to be a distraction to abutters.
- (d) Adequate on-site parking shall be provided based on one space for every three (3) customers, patrons or users plus one (1) space for every two (2) employees.
- (e) Front, side, and rear yard landscaping shall be provided where no natural woodlot exists.

**Section 1019 Manufacturing**

- (a) Roads shall be of sufficient size and condition to handle projected employee and truck traffic.
- (b) The minimum road frontage shall be 250 feet.
- (c) The minimum setback for new buildings from the nearest street shall be 100 feet.
- (d) The minimum setback for side and rear yards shall be 75 feet.
- (e) The coverage of buildings, parking lots, and drives shall be no more than 50% per parcel.
- (f) Parking shall be provided at one space per employee on the site. Parking shall be no closer than 75 feet to any property line.
- (g) The proposed buildings shall be at least 200 feet from existing residential buildings and 75 feet from existing commercial buildings.
- (h) Front yard landscaping shall be provided where no natural woodlot exists.
- (i) A maximum of two (2) access points shall be allowed for each lot.
- (j) Noise and light pollution shall be kept to a minimum and lights shall be white, non-sodium, and shielded so as not to be a distraction to abutters.

**Section 1020 Manufactured Housing**

Only one unit of Manufactured Housing is allowed on a lot. Manufactured Housing Parks are not allowed in any district

**Section 1021 Non-Conforming Structure (Voluntary Demolition/Removal and Replacement)**

- (a) Demolition/removal shall not take place prior to permit issued by the enforcement officer.
- (b) A certified plot plan locating the existing structure on the lot shall be submitted with the Special Exception application.
- (c) A second certified plot plan shall be submitted to the enforcement officer locating the completed foundation of the replacement structure prior to further construction.
- (e) The exterior dimensions of the structure may be expanded in compliance with Section 706.
- (f) The exterior dimensions may be reduced.
- (g) Placement of the new structure on the lot is identical to or more nearly meets setback regulation.
- (h) Permit for Demolition/Removal and Replacement shall be issued in accordance to Section 1105.
- (i) Provision for a single one year extension may be granted by the enforcement officer.

**Section 1022 Non-Conforming Use Change or Expansion**

- (a) The dimensions of the lot or structure are unchanged **or** more nearly meet the frontage, setback or lot size standards of this ordinance.

- (b) The proposed use is less or no more intense than the previous non-conforming use as measured by:
  - (i) Volume and type of traffic expected to be generated;
  - (ii) Size of the building or structure housing the use;
  - (iii) Number of potential customers;
  - (iv) Number of potential bedrooms;
  - (v) Similar measures of intensity of use.

#### **Section 1023 Office Building**

- (a) Landscaping shall be provided where no natural woodlot exists.
- (b) Adequate parking is to be provided on-site with one (1) space available for each employee and one space for each three (3) visitors to the building at any one time.
- (c) The permitted hours of operation in the Village Districts and the Historic Districts are between 8:00 AM and 6:00 PM seven days a week.

#### **Section 1024 Recreation Facility**

- (a) Adequate on-site parking shall be provided based on every three (3) customers, patrons or users plus one (1) space for every two (2) employees.
- (b) Noise and light pollution shall be kept to a minimum and lights shall be white, non-sodium, and shielded so as not be a distraction to abutters.
- (c) The facility shall be set back at least 100 feet from the road and 75 feet from rear and side lot lines.
- (d) Hours of operation in the Village Districts and the Historic Districts shall be no greater than 7:00 AM to 12:00 Midnight.

#### **Section 1025 Recreational Vehicles**

Recreation Vehicles are regulated under Article 14.

#### **Section 1026 Repair Shop**

#### **Section 1027 Rest/Convalescent Home**

- (a) In the Village Districts and in the Historic Districts, Rest/Convalescence homes are to be located only in existing structures.
- (b) Adequate parking is to be provided on site. In the Village Districts and Historic Districts, parking is to be located only in the rear of the building.

#### **Section 1028 Restaurants**

- (a) All signs, if illuminated, are to be externally illuminated; and exterior lighting shall be white, non-sodium, and shielded so as not be a distraction to abutters.
- (b) Restaurants are to be located only in existing structures.
- (c) Adequate on-site parking is to be provided at one (1) space per expected three (3) customers at any one time plus one (1) space for every two (2) employees.

#### **Section 1029 Retail Business**

- (a) Retail stores are to have a maximum floor space of 2000 square feet per floor.
- (b) One externally illuminated sign is permitted at a size no larger than twelve (12) square feet.
- (c) Operating hours are to be permitted between 8:00 AM and 9:00 PM seven days a week.
- (d) Adequate on-site parking is to be provided at one (1) space for every three (3) expected customers at one time.
- (e) If parking is provided on the street side of the lot, a minimum of a two (2) foot wide

vegetative buffer is required.

**Section 1030 School**

- (a) Adequate on-site parking shall be provided based on the proposed use of the building and number of anticipated students, participants, and employees.
- (b) One externally illuminated sign is permitted at a size no larger than twelve (12) square feet.
- (c) Exterior lighting shall be white, non-sodium, and shielded so as not be a distraction to abutters.

**Section 1031 Service Business**

- (a) In the Village Districts and Historic Districts, operating hours are to be permitted between 7:00 AM and 8:00 PM seven days a week.
- (b) In the Village Districts and Historic Districts, Service Businesses are to have a maximum floor space of 2000 square feet per floor.
- (c) One externally illuminated sign is permitted at a size no larger than twelve (12) square feet.
- (d) Adequate on-site parking is to be provided at one (1) space for every three (3) expected customers at one time.
- (e) If parking is provided on the street side of the lot, a minimum of a two (2) foot wide vegetative buffer is required.

**Section 1032 Telecommunications Facilities**

Telecommunications Facilities are regulated under Article 13.

**Section 1033 Warehouse/ Storage Facility**

- (a) One externally illuminated sign is permitted at a size no larger than twelve (12) square feet.
- (b) Noise and light pollution shall be kept to a minimum and lights shall be white, non-sodium, and shielded so as not be a distraction to abutters.
- (c) A landscaped vegetative buffer at least 10 feet wide shall be provided where no natural woodlot exists.
- (d) The facility shall be setback at least 100 feet from the street and 50 feet from side and rear lot lines.

**TABLE 1  
USES BY DISTRICT OR ZONE**

**P = Permitted Use      N = Not Permitted      E = Permitted By Special Exception**

| USE |   | RURAL/<br>AGRICUL<br>TURAL | VILLAGE<br>DISTRICT | HISTORIC<br>DISTRICT | PROVINCE<br>LAKE |
|-----|---|----------------------------|---------------------|----------------------|------------------|
| 1   | Accessory Building/Use  | P                          | P                   | P                    | P                |
| 2   | Aggregate Extraction  | P                          | N                   | N                    | N                |
| 3   | Automobile Service Station  | E                          | N                   | N                    | N                |
| 4   | Automobile and Truck Repair Station   | E                          | N                   | N                    | N                |
| 5   | Bed and Breakfast   | P                          | P                   | P                    | N                |
| 6   | Campgrounds   | E                          | N                   | N                    | N                |
| 7   | Church/Community Building   | P                          | P                   | P                    | N                |
| 8   | Construction/ Building Contracting  | P                          | P                   | P                    | N                |
| 9   | Contractor Storage Yard   | E                          | N                   | N                    | N                |
| 10  | Cottage Industry  | P                          | E                   | E                    | N                |
| 11  | Dwelling, Multi-Family  | E                          | E                   | E                    | N                |
| 12  | Dwelling, Single Family   | P                          | P                   | P                    | P                |
| 13  | Dwelling, Two Family  | P                          | E                   | E                    | N                |
| 14  | Farm  | P                          | P                   | P                    | N                |
| 15  | Forestry/Woodlot  | P                          | P                   | P                    | N                |
| 16  | Home Occupation   | P                          | P                   | P                    | E                |
| 17  | Inn (Conversion)  | P                          | P                   | P                    | N                |
| 18  | Inn (New Construction)  | E                          | N                   | N                    | N                |
| 19  | Manufacturing   | E                          | N                   | N                    | N                |
| 20  | Manufactured Housing  | P                          | N                   | N                    | N                |
| 21  | Non-Conforming Structure<br>(Voluntary Demolition/Removal<br>and Replacement) | E                          | E                   | E                    | E                |
| 22  | Non-Conforming Use<br>(Change or expansion)                                   | E                          | E                   | E                    | E                |
| 23  | Office Building   | E                          | E                   | E                    | N                |
| 24  | Recreation Facility   | E                          | E                   | E                    | N                |
| 25  | Recreational Vehicles   | P                          | P                   | N                    | N                |
| 26  | Repair Shop   | E                          | E                   | E                    | N                |
| 27  | Rest/Convalescent Home  | E                          | E                   | E                    | N                |
| 28  | Restaurants   | P                          | E                   | E                    | N                |
| 29  | Retail Business   | P                          | E                   | E                    | N                |
| 30  | School  | P                          | E                   | E                    | N                |
| 31  | Service Business  | E                          | E                   | E                    | N                |
| 32  | Telecommunications Facilities   | E                          | E                   | E                    | N                |
| 33  | Warehouse/Storage Facility  | E                          | N                   | N                    | N                |

## **ARTICLE 11 ADMINISTRATION AND ENFORCEMENT**

### **Section 1101 Enforcement Officer**

The administrative and enforcement officer for this Ordinance shall be known as the Enforcement Officer and shall be appointed by and be the agent of the Board of Selectmen. The Enforcement Officer shall administer the Zoning Ordinance literally and shall not have the power to permit any use of land or buildings not in conformance with this Ordinance.

### **Section 1102 Enforcement and Penalty**

- 1102.1 This Ordinance shall be enforced by the Enforcement Officer if any building or use of land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained, or used in violation of this Ordinance. The Enforcement Officer shall institute, in the name of the Town, any appropriate action, injunction, or other proceeding to prevent, restrain, correct or abate such construction or use or to prevent in or about the premises any act, conduct, business, or use constituting a violation.
- 1102.2 Any person who violates this Ordinance shall be fined one hundred dollars (\$100) per day per violation. No action may be brought under this provision unless the alleged offender has had at least seven (7) days notice by certified mail that a violation exists.

### **Section 1103 Zoning Board of Adjustment**

There shall be a Zoning Board of Adjustment as provided by RSA 673:1, IV. Its members shall have terms and powers hereby conferred upon the Zoning Board of Adjustment by RSA 673:3 and RSA 674:33. The members of the ZBA are to be elected by the registered voters of the Town.

- 1103.1 The Zoning Board of Adjustment shall have the following powers as conferred by RSA 674:33 and as otherwise conferred by law.
- A. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Enforcement Officer in the administration of this Ordinance.
  - B. To hear and decide Special Exceptions to the terms of this Ordinance upon which the Zoning Board of Adjustment is required to pass as provided in this Ordinance.
  - C. To authorize upon appeal in specific cases such Variances from the terms of this Ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship and so that the spirit of the Ordinance will be observed and substantial justice done. In so doing, the Zoning Board of Adjustment may attach such conditions and safeguards, as it deems necessary to protect the neighborhood and the community.
  - D. To hear and decide appeals from decisions of the Planning Board as authorized by RSA 676:5, III.
  - E. In exercising the above-mentioned powers, the Zoning Board of Adjustment may reverse or affirm wholly or in part or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and to that end shall

have all the powers of the Enforcement Officer from whom the appeal is taken.

- F. The concurring vote of a simple majority of the membership of the Zoning Board of Adjustment shall be necessary to reverse any action of the Enforcement Officer or to decide in favor of the applicant on any matter upon which the ZBA is required to pass under this Ordinance or to affect any variation in this Ordinance.

1103.2 The following rules shall apply in all proceedings before the Zoning Board of Adjustment:

- A. All appeals and applications to the Zoning Board of Adjustment shall be in writing on forms prescribed by the ZBA. Every appeal or application shall refer to the specific provision of the Ordinance involved, and shall set forth the interpretation, the Special Exception, or Variance for which application is made.
- B. Any application to the Zoning Board of Adjustment shall require a public notice and hearing in accordance with law.
- C. The Zoning Board of Adjustment shall establish such appropriate fees as will compensate the Town for the cost of processing and reviewing all appeals and applications submitted to the ZBA. The applicant shall pay the established fee upon submission of the appeal or application. The applicant is responsible for all costs of special investigative studies determined necessary by the Zoning Board of Adjustment.
- D. The provisions contained herein are intended to comply with applicable provisions of New Hampshire Revised Statutes Annotated, Title LXIV, as amended. Any such amendment shall constitute a similar amendment herein without further action.

#### **Section 1104 Variance**

1104.1 The Zoning Board of Adjustment may, on an appeal, grant a Variance from the provisions of this Ordinance, if the ZBA determines that the following five requisite standards are met, namely:

- A. Granting the variance will not be contrary to the public interest;
- B. The use is not contrary to the spirit of the ordinance;
- C. Granting the variance would do substantial justice;
- D. The values of surrounding properties are not diminished;
- E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

In determining whether or not these standards are met, the Zoning Board of Adjustment shall find the following facts and so specify in its decision:

1. That there are unique physical circumstances or conditions including irregularity, narrowness, or shallowness of lot, size or



shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Ordinance in the neighborhood or district in which the property is located.

2. That because of such physical circumstances or conditions the property cannot be used in strict conformity with the provisions of this Ordinance and that the authorization of a Variance is therefore necessary to enable the reasonable use of the property.
3. That the Variance if authorized will not diminish the value of surrounding properties.
4. That the Variance if authorized will represent the minimum Variance that will afford reasonable relief.

1104.2 In authorizing a Variance, the Zoning Board of Adjustment may attach such conditions and safeguards, as it deems necessary to protect the neighborhood and community, as to the use of the land.

#### **Section 1105 Building Permits**

A Building Permit expires twenty-four (24) months after the date of issue. An applicant may request an extension of twelve (12) months from the enforcement officer before the permit expires.

### **ARTICLE 12 MISCELLANEOUS PROVISIONS**

#### **Section 1201 Severability Clause**

The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision thereof.

#### **Section 1202 Effective Date**

This ordinance shall take effect immediately upon its adoption.

#### **Section 1203 Amendments**

This ordinance and its accompanying maps may be amended in accordance with the provisions of the applicable statutes of the State of New Hampshire.

#### **Section 1204 Validity**

Whenever the provisions of this ordinance or rulings made under the authority hereof differ from those of other ordinances or regulations of the Town, that provision or ruling which imposes greater restriction or higher standard shall govern.

### **ARTICLE 13 PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES**

#### **Section 1301 Purpose and Intent**

The purpose of this Article is to preserve the authority of the Town of Effingham to regulate and provide opportunity for the siting of wireless telecommunications facilities while keeping, first and foremost, the rural, environmental and scenic qualities of the Town consistent with its Master

Plan. The intent and goal of this Article is to permit wireless telecommunications facilities in the Town of Effingham and to:

- A. Reduce adverse impacts on scenic vistas.
- B. Reduce adverse impacts on environmentally sensitive areas, historically significant locations, health and safety by injurious accidents to persons and property, and prosperity through protection of property values.
- C. Promote co-location and minimal impact siting to the highest extent possible.
- D. Permit construction of new towers only where all other reasonable alternatives have been exhausted.
- E. Require use of existing structures whenever possible.
- F. Encourage personal wireless telecommunications services to provide a blanket of coverage for the Town of Effingham, not just nearby corridors, incorporating the goals listed above.

#### **Section 1302 Applicability**

The terms of this Article and the Site Plan Review Regulations shall apply to all personal wireless telecommunications facilities proposed to be located on property owned by the Town of Effingham, on privately owned property and on property that is owned by any other governmental entity that acts in its proprietary capacity to lease such property to a carrier.

- A. All applications are subject to approval by the Zoning Board of Adjustment in accordance with the terms of the Zoning Ordinance and the Planning Board in accordance with Site Plan Review Regulations.
- B. All applications for a variance and/or special exception must go before the Zoning Board of Adjustment prior to Site Plan Review.

#### **Section 1303 Definitions**

For the purpose of this Article, the following terms shall have the meaning given herein:

**Antenna:** The surface from which wireless radio signals are sent and/or received by a personal wireless service facility.

**Antenna Array:** A collection of antennas attached to a mount to send and receive radio signals.

**Average Tree Canopy Height:** An average height found by inventorying the height, at above ground level (AGL), of all trees over twenty (20) feet in height within the area that extends for a distance of fifty (50) feet from the base of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest. Trees that will be removed for construction shall NOT be used in this calculation.

**Camouflaged:** A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

**Carrier:** A Company that provides personal wireless services also sometimes referred to as a provider.

**Co-location:** The use of a single mount on the ground by more than one carrier (vertical co-location), or the use of more than one mount on the same site by more than one carrier (horizontal co-location), or the use of several mounts on an existing building or structure by more than one carrier.

**Environmental Assessment (EA):** An EA is a document required by the Federal Communications Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in certain designated areas.

**Equipment Shelter:** An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for personal wireless service facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

**Facility:** See Personal Wireless Service Facility.

**Fall Zone:** The area on the ground from the base of a ground mounted personal wireless service facility that forms a circle with a diameter equal to twice the height of the facility, including any antennas or other appurtenances. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

**Guyed Tower:** A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

**Height:** The height above ground level (AGL) from the natural grade of a site to the highest point of a structure.

**Lattice Tower:** A type of mount with multiple legs and structural cross bracing between the legs that is self-supporting and freestanding.

**Mast:** A thin pole that resembles a streetlight standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

**Monopole:** A thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

**Mount:** The structure or surface upon which antennas are mounted, including the following four types of mounts:

1. Roof-mounted. Mounted on the roof of a building.
2. Side-mounted. Mounted on the side of a building.
3. Ground-mounted. Mounted on the ground.
4. Structure-mounted. Mounted on a structure other than a building.

**Personal Wireless Service Facility (PWSF):** Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended. Personal Wireless Service Facilities include a mount, antenna, equipment shelter, and other related equipment.

**Personal Wireless Services:** The three types of services regulated by this Article: Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as described in the Telecommunications Act of 1996, as amended.

**Radio Frequency (RF) Engineer:** An engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

**Radio Frequency Radiation (RFR):** The emissions from personal wireless service facilities.

**Security Barrier:** A wall, fence, or berm that restricts an area from unauthorized entry or trespass.

**Separation:** The distance between one carrier's array of antennas and another carrier's array.

#### **Section 1304 District Regulations**

A. Location: Wireless telecommunications facilities shall be permitted in all Zoning Districts, except as restricted by this Article. Applicants seeking approval for a wireless telecommunications facility shall first evaluate existing structures for the siting of the facility. Only after finding that there are no suitable existing structures, shall a provider propose a new ground mounted facility.

B. Existing Structures Policy: Wireless telecommunications facilities shall be located on existing structures including, but not limited to, buildings, water towers, existing telecommunications facilities, utility poles or towers, and related facilities, provided that such installation preserves the character and integrity of those structures. Personal wireless service facilities located in the Historic and Village Overlay Districts may only be located on existing structures.

C. Existing Structures Burden of Proof: The applicant shall have the burden of proving that there are no existing structures that are suitable to locate its wireless telecommunications facility. To meet that burden, the applicant shall take all the following actions to the extent applicable:

1. The Applicant shall submit to the Zoning Board of Adjustment a list of all contacts made with owners of potential sites regarding the availability of potential space for a wireless telecommunications facility. If the Zoning Board of Adjustment informs the applicant that additional existing structures may be satisfactory, the applicant shall contact the property owner(s) of those structures.
2. The Applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "Return Receipt Requested" forms from the U.S. Post Office shall be provided for each owner of existing structures who was contacted.
3. If the Applicant claims that a structure is not capable of physically supporting a wireless telecommunications facility, this claim must be certified by an independent licensed professional structural engineer hired by the Town of Effingham and paid for by the Applicant.

D. Ground Mounted Facilities Policy: Except in the Historic and Village Overlay Districts, if the applicant demonstrates that it is not feasible to locate on an existing structure, ground mounted telecommunications facilities shall be designed so as to be camouflaged to the greatest extent possible, limited to the absolute minimum necessary height, including, but not limited to use of compatible building materials and colors, screening, landscaping, and placement within trees.

E. Locations for Ground Mounted Facilities: Permitted by special exception in the Rural/Agricultural District. Ground mounted wireless telecommunications facilities shall be prohibited from:

1. Village Overlay Districts
2. Historic Districts
3. Within 100 feet of town or state roads
4. Within 250 feet of a scenic road or siting in a manner readily visible from a scenic road.

#### **Section 1305 Use Regulations**

Wireless telecommunications facilities shall require a certificate of zoning compliance in all

cases and may be permitted as follows, by special exception in all districts. See Section 13.2 A:

A. Existing Tower Structures: Subject to the issuance of a certificate of zoning compliance which shall be issued only if it is determined that the height of the mount is not increased, a security barrier exists, the area of the security barrier is not increased and the siting is consistent with the standards set forth at Section 13.7, carriers may locate a wireless telecommunications facility on any guyed tower, lattice tower, mast or monopole in existence prior to the adoption of the Article, or on any wireless telecommunications facility previously approved under the provisions of this Article so long as the co-location complies with the approved site plan.

This provision applies only so long as height of the mount is not increased, a security barrier already exists and the area of the security barrier is not increased. Otherwise, full site plan review is required.

B. Reconstruction of Existing Tower Structures: A guyed tower, lattice tower, mast or monopole in existence prior to the adoption of this Article may be reconstructed with a maximum twenty (20) foot increase in height so as to maximize collocation so long as the standards of this Article are met and so long as this twenty (20) foot increase in height does not cause a facility previously existing to exceed the tree canopy by more than 25 feet in height. The mount shall be replaced with a similar mount that does not significantly increase the visual impact on the community.

C. Existing Structures: Subject to the provisions of this Article and except as otherwise prohibited under Section 13.6 C, a carrier may locate a wireless telecommunications facility on an existing structure, building, utility tower or pole or water tower.

D. Ground Mounted Facility: A wireless telecommunications facility involving construction of a ground mount shall be subject to the provisions of this Article.

**E. (This section was deleted by a Town vote on March 12, 2002.)**

### **Section 1306 Dimensional Requirements**

Wireless telecommunications facilities shall comply with the following requirements:

A. Maximum Height: In no case shall a wireless telecommunications facility exceed 25 feet over the average tree canopy height. The Planning Board will consider a 15' extension provided that the applicant can demonstrate the technical necessity of such extension and provided that the performance and design standards of Section 13.7 are met. The applicant will pay for the town to hire an independent qualified radio frequency engineer to substantiate the applicant's claim of technical necessity. Technical considerations include, but are not limited to, the availability of alternative sites, co-location and improved reception and coverage within the Town. The Planning Board shall not grant the extension for any siting within scenic vistas designated by the Planning Board.

B. Height, Existing Structures and Utility Poles: Carriers that locate new wireless telecommunications facilities on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts and monopoles may be permitted with no increase in height.

C. Height, Other Existing Structures: The height of a wireless telecommunications facility shall not increase the height of a structure unless the facility is completely camouflaged; for example, a facility completely within a flagpole, steeple, or chimney. The increase in height of the structure shall be in scale and proportion to the structure as originally configured. A carrier may locate a wireless telecommunications facility on a building that is legally nonconforming with respect to height, provided that the provisions of this Article are met.

D. Setbacks: All wireless telecommunications facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located.

E. Fall Zone for Ground Mounts: In order to ensure public safety, the minimum distance from the base of any ground mount of wireless telecommunications facilities to any property line, public road, habitable dwelling, business or institution, or public recreational area shall be, at minimum, the distance equal to the height as defined in this Article.

### **Section 1307 Performance and Design Standards**

The following performance and design standards shall apply to all applications.

A. Visual impacts shall be measured by applying the following standards:

1. Visual impacts are measured on the basis of change in community scale, as exhibited in relative height, mass or proportion of the wireless telecommunications facility within their proposed surroundings.
2. Visual impacts are measured by the contrast created by new visible elements set against a contrasting background.
3. Visual impacts are measured by evaluating how different colors and textures contrast against the existing background.
4. Visual impacts are measured by evaluating how the use of materials that are foreign to the existing built environment within their proposed surroundings create visual blight.

B. Enhancements are measured on the basis of:

1. Conservation of opportunities to maintain community scale, e.g., buffering areas and low lying buildings should not be compromised so as to start a trend away from the existing community scale.
2. Amount and type of landscaping and/or natural vegetation.
3. Continuation of existing colors, textures, and materials.

C. Visibility focuses on:

1. Eliminating or mitigating visual impact.
2. Protecting, continuing and enhancing the existing environment.

D. Camouflage for Facilities on Existing Buildings or Structures: Roof Mounts

1. When a wireless telecommunications service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal or camouflage the facility within or behind existing or new architectural features to limit its visibility from public ways.
2. Facilities mounted on a roof shall be stepped back from the front facade in order to limit their impact on the building's silhouette.

E. Camouflage for Facilities on Existing Buildings or Structures: Side Mounts

1. Wireless telecommunications facilities, which are side mounted, shall blend with the existing building's architecture and, if individual antenna panels are over five (5) square feet, the panels shall be painted or shielded with material consistent with the design features and materials of the building.

F. Camouflage for Ground Mounted Facilities:

1. The carrier shall maintain a vegetative buffer at least as tall as the fence, 360° surrounding the facility including the security fence, a minimum twenty five (25) feet deep starting at the

10fence. The barrier shall be in keeping with the surrounding vegetation and shall effectively screen the facility 365 days of the year.

2. The vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier's lease. The easement or lease shall specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying, present a hazard to persons or property or as approved during site plan review.

G. Color: To the extent that any component of a wireless telecommunications facility, including guy wires, extends above the height of the vegetation immediately surrounding it, it shall be of a color which blends with the background or surroundings.

#### H. Equipment Shelters

1. Equipment shelters shall be located in underground vaults; or
2. Equipment shelters shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance, to the buildings in the area of the wireless telecommunications facility; or
3. Equipment shelters shall be camouflaged behind an effective year round landscape buffer equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine the style of fencing and/or landscape buffer that is compatible with the neighborhood; or
4. If mounted on a rooftop, the equipment shelter shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be a part of the original structure.
5. All utilities to the site from existing utilities shall be underground.

#### I. Lighting, Signs and Security

- 1 Lighting:
  - a. The mounts of the wireless telecommunications facility shall be lighted only if required by the Federal Aviation Administration (FAA).
  - b. Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. Foot-candles measurements at the property line shall be 0.0 initial foot-candles.
2. Signs: Signs shall be limited to those needed to identify the property, its owner and warn of any danger. Signs shall comply with all other applicable requirements of the Zoning Article.

J. Security Barrier: A security barrier is required for all wireless telecommunications facilities.

K. Historic Buildings and Districts: Any application for a site within the Historic District to which this section applies shall be referred to the Historic District Commission for an advisory recommendation regarding the architectural compatibility of the proposal.

1. Any wireless telecommunications facility located on or within an historic structure shall not alter the character or defining features, distinctive construction methods or original historic materials of the building.
2. Any alteration made to an historic structure to accommodate a wireless telecommunications facility shall be fully reversible.
3. Wireless telecommunications facilities authorized by this subsection shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas.

#### L. Scenic Landscapes and Vistas

1. Wireless telecommunications facilities shall not be located within open areas that are visible from public roads, recreational areas, or abutting properties. All ground mounted wireless telecommunications facilities shall be surrounded by a buffer of dense tree growth as per section 13.7 F.

2. Wireless telecommunications facilities shall not be visible above the ridgeline from public roads, recreational areas, designated scenic vistas or abutting property.

#### M. Driveways

1. Existing entrances and driveways to serve a wireless service facility shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic and environmental impact.
2. New driveways to serve a wireless telecommunications facility shall not exceed twelve (12) feet in width. A crushed gravel surface is required.

#### N. Antenna Types

1. Any antenna array placed upon an existing or proposed ground mount, utility pole or transmission line mount shall have a diameter of no more than four (4) feet, exclusive of the diameter of the mount, unless the Planning Board finds a larger antenna array does not materially impair the visual impact of the siting.
2. Ground and Roof Mounts: All ground mounts shall be of a mast type mount. Lattice towers, guyed towers, and roof-mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project permitted under Section 13.5 B.

At the March 12, 2002 town meeting, the following amendment (Warrant Article 3, Amendment #4) to the above section was passed as follows:

2. Lattice towers, guyed towers, and roof-mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project permitted under Section 13.5 B. New construction of monopoles and monopines is allowed under this Article. (This section was amended by a Town vote on March 12, 2002. Please see Addendum Section II.)

O. Hazardous Waste: No hazardous waste shall be discharged on the site of any wireless telecommunications facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred and ten percent (110 %) of the volume of the hazardous materials stored or used on the site.

P. Noise: Wireless telecommunications facilities shall not generate noise in excess of that permitted under the Site Plan Review Regulations.

Q. Radio Frequency Radiation (RFR) Standards: All equipment proposed for a wireless telecommunications facility shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation (FCC Guidelines), under Report and Order, FCC 96326, published on August 1, 1996, and all subsequent amendments.

### **Section 1308 Monitoring and Maintenance**

A. The owner of the facility shall maintain the wireless telecommunications facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.

B. As part of the issuance of the site plan approval or certificate of zoning compliance, the property owner shall agree that the Town of Effingham may enter the subject property to obtain RFR measurements and noise measurements at the expense of the carrier. The Town of Effingham shall provide reasonable written notice to the carrier and landowner and provide them the opportunity to accompany the Town Representatives when the measurements are conducted.

C. Security for Removal: Recognizing the hazardous situation presented by abandoned and



unmonitored wireless telecommunications facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunications facilities in the event that a facility becomes obsolete or is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with section 13.9. The amount of the security shall be based upon the removal cost plus fifteen percent (15%), provided by the applicant and certified by an independent professional civil engineer licensed in New Hampshire every five (5) years from the date of the Planning Board's approval of the site plan. If the cost has increased more than fifteen percent (15%) then the owner of the facility shall provide additional security in the amount of the increase. It shall be a condition of any approval granted under this Article that the name and address of the facility owner shall be accurately reported to the Town at all times during the life of the facility. All transfers of ownership shall be reported in writing to the Town before such transfers occur.

### **Section 1309 Abandonment or Discontinuation of Use**

A. Notification: At such time that a carrier plans to abandon or discontinue operation of a wireless telecommunications facility, such carrier will notify the town by certified U.S. Mail of the proposed date of abandonment or discontinuation of operations.

B. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operation. In the event that a carrier fails to give such notice, the wireless telecommunications facility shall be considered abandoned upon such discontinuation of operations.

C. Removal: Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the wireless telecommunications facility within ninety (90) days from the date of abandonment or discontinuation of use. This shall include, but not be limited to:

1. Removal of antennas, mount, equipment shelters and security barriers from the subject property.
2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
3. Restoration of the location of the facility to its natural condition, except that any landscaping and grading shall remain in the after condition.

D. Failure to Remove: If the owner of the facility does not remove the facility upon the Board of Selectmen's order, then the Board of Selectmen shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Board of Selectmen. If the abandoned facility is not removed within ninety (90) days, the town may execute the security to pay for this action. The carrier shall be fined \$100 per day starting on the 91st day after declaration until the facility is removed.

### **Section 1310 The following are exempt from the provisions of this Article:**

1. Emergency Wireless Telecommunication Facility. Temporary Wireless Telecommunication Facilities for emergency communication by public officials.
2. Amateur (ham) radio services. Amateur (ham) radio services licensed by the Federal Communications Commission (see RSA 674:16)
3. Parabolic (dish) antenna. Parabolic antenna that is accessory to a residential use of the property.
4. Maintenance, repair, or reconstruction. Maintenance, repair, or reconstruction of a Emergency Wireless Telecommunication Facility and related equipment, provided that there is no change in the height, or any other dimension of the facility.

## **ARTICLE 14 RECREATION VEHICLES**

### **Section 1401**

A Recreation Vehicle, as defined by this Article, owned for personal use by a landowner of the Town of Effingham, may be stored or parked on the landowner's property during periods of non-use provided the Vehicle remains mobile, is not connected to any utilities, and is not used for storage, shelter, or human habitation.

### **Section 1402**

A landowner may allow the use and placement of a Recreation Vehicle for Recreation purposes on his or her property, even if not a campground. The landowner must obtain a permit from the Enforcement Officer in order to use a Recreation Vehicle for the purposes set forth in this section and such Recreation Vehicle must have adequate sanitary facilities, approved by the State of New Hampshire and the Town of Effingham as per RSA 216-I:13. The Enforcement Officer may issue multiple permits per year not to exceed 120 aggregate days per calendar year. Further, upon expiration of any permitted use under this section the Recreation Vehicle must comply with all aspects of section 1401 of this article.

### **Section 1403**

A landowner may use a single Recreation Vehicle as a temporary place of occupancy while a permanent dwelling is being built on the same property, provided the landowner acquires a permit for such use from the Enforcement Officer. The Recreation Vehicle must have adequate sanitary facilities, approved by the State of New Hampshire and the Town of Effingham as per RSA 216-I:13. Said permit will allow the landowner to use his or her Recreation Vehicle for the purposes set forth in this section for no more than one calendar year. Upon the expiration of one year, the landowner may apply for an extension of the initial one-year permit. Further, upon expiration of any permitted use under this section the Recreation Vehicle must comply with all aspects of section 1401 of this article.

## **ARTICLE 15 HISTORIC DISTRICT**

### **Section 1501 Purposes**

The purpose of this Article is to safeguard the heritage of Effingham by:

- Preserving structures and places of historic and architectural value;
- Preserving a district which reflects elements of Effingham's cultural, social, economic, political, and architectural history;
- Conserving property values in the Historic District;
- Fostering Civic Beauty; and
- Promoting the use of the Historic District for the education and pleasure of the citizens of Effingham

### **Section 1502 Historic District**

Pursuant to NH RSA 674:46, the Town of Effingham hereby establishes the Center Effingham Historic District and the Lord's Hill Historic District, which are bounded as follows: (see attached map)

### **Section 1503 Historic District Commission**

Pursuant to NH RSA 673:1, the Town of Effingham hereby establishes a Historic District Commission, with all of the powers and duties authorized and required in State law (RSA 673-677).

The Historic District Commission shall consist of seven (7) members and two (2) alternate members. The members and alternate members shall be appointed (within 30 days of the establishment of the Historic District Commission) by the Board of Selectmen for the terms specified in RSA 673:5-6. In determining each member's qualifications, 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. One Commission member shall be a member of the Board of Selectmen, at least one member from the Center Effingham Historic District and at least one member from the Lord's Hill Historic District.

The Commission shall adopt, and may amend, rules governing its procedures and the duties of its officers. The Commission shall adopt, and may amend, regulations for the purpose of enforcing this Article and the standards contained within it. These regulations shall provide general guidelines for the persons seeking to move, demolish, or change the external appearance or use of buildings, structures, and land; or to construct new buildings and structures (including signs) within the Historic District.

In addition to the functions authorized by State law, the commission may conduct architectural and historic surveys, prepare and publish maps, brochures, and other publications, erect historic markers, advise owners on the preservation and restoration of their properties, and cooperate with and advise other Town boards and agencies on historic sites and buildings. The Commission is empowered to accept gifts, grants, and contributions for the purpose of performing any of its functions.

### **Section 1504 Requirement for Certificate of Approval**

No person shall alter, construct, reconstruct, repair, demolish, or change the external appearance of any building or structure, or change the use of land in the Historic District without a Certificate of Approval from the Commission.

Application: The application for a Certificate of Approval shall be made in writing on a form provided by the Commission, and shall be accompanied by whatever plans, elevations, sketches, photographs, samples and other information deemed necessary by the Commission. Failure to provide adequate information on the proposal shall be sufficient grounds for disapproval.

Public Hearing: The Commission shall hold public hearing on any application (if it deems appropriate). The Commission shall give notice of the public hearing to the abutters of the property in question (and to any other property owners the Commission deems materially affected by the proposal), by certified mail and shall post notices of the public hearing in two appropriate places in the Town (including one public place in the District) and shall publish a notice of the hearing in a newspaper of general circulation in the Town. The applicant shall be responsible for all costs of mailing, posting and publishing these notices.

Action of Commission: The Commission shall review the application and shall base its decision to approve or disapprove the proposal on the appropriateness of the proposed changes, the purposes, and standards of this Article and the regulations and guidelines adopted by the Commission.

Hardship Approval: Although the proposed change may be deemed inappropriate, the Commission may find that, owing to conditions especially affecting the lot, building or structure involved, but not affecting the District generally, failure to issue a Certificate of Approval would involve a peculiar and unusual hardship to the applicant. If, in such a case, a Certificate of

Approval can be issued without a substantial departure from the intent and purposes of this Article, the Commission may approve the application and issue a Certificate of Approval, with such conditions, as the Commission deems necessary to minimize the impact of the change.

Final Action: The Commission, in accordance with the procedures established in NH RSA 676:8-9 shall issue a Certificate of Approval or a notice of disapproval to the applicant within forty-five (45) days. A notice of disapproval shall include the reasons for disapproval.

Standards: The following standards shall apply to proposed changes of buildings, structures, land, and use in the District.

- Buildings, structures, and landscape features of historic, architectural and aesthetic significance shall be preserved, whenever possible.
- Alterations and additions to existing buildings and structures shall not destroy or obscure historically and architecturally significant features, or the distinguishing qualities of the building or structure.
- Additions to existing buildings and structures shall be compatible in design, character, and scale with the original building or structure.
- New buildings and structures shall be compatible in design, location, and scale with the existing buildings and structures in the Historic District.
- Uses or buildings, structures, or land shall not be:
  - ◆ Incompatible with the visual or historic character of the Historic District;
  - ◆ Detrimental to buildings or uses on adjoining lands;
  - ◆ Obnoxious because of noise, vibration, odor, smoke, dust, fumes, or similar conditions; or
  - ◆ Likely to produce congestion or heavy traffic, or to detract from the quiet enjoyment of the Historic District by its residents or the public.
- The following uses are prohibited in the Historic District:
  - Mobile home (trailers)
  - Dumps
  - Junkyards
  - Public storage units

Exception: This Article and the Regulations adopted under it shall not prevent:

- Timber Harvesting;
- Ordinary maintenance or repair of any structure or place, which does not change the external appearance of the structure or place;
- Any interior or underground alteration or construction that does not change the external appearance or use of the building, structure, or place; or
- Installation of monuments or markers within private graveyards.

Appeals: Any person aggrieved by the decision of the Commission may appeal that decision under the procedures established in State law (NH RSA 676:10 and RSA 677)

Enforcement: This Article and the regulations adopted under it shall be enforced by the Historic District Commission (NH RSA 676:10)

Penalties: The penalties for violations of this Article and the regulations adopted under it shall be those established by State law (NH RSA 676:10)

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

## ARTICLE 16: WETLANDS

### **Section 1601 Purpose and Intent**

Purpose: The purpose of this Article is to protect and regulate the use of wetlands, surface waters, and their buffer areas, as defined herein.

Intent: The intent of this Article is to:

- A. Ensure the protection of wetland resources from activities that would adversely affect their functions and values, including but not limited to the following:
  1. Prevent damage of property and degradation of surface and ground waters by maintaining the capacity of wetlands to receive stormwater and minimize damage from flooding events.
  2. Prevent or minimize soil erosion and the subsequent sedimentation of wetlands and surface waters.
  3. Prevent the loss of unique and unusual natural areas associated with wetlands and surface waters.
  4. Prevent the degradation of surface and ground water quality within and adjacent to wetlands.
  5. Prevent the degradation of potential surface and ground drinking water supplies as well as existing aquifers and their recharge areas.
  6. Prevent the loss or degradation of wetland wildlife populations and protect their Habitats both within wetlands and the immediate buffer zone of wetlands.
  7. Prevent the loss or degradation of a diversity of recreational benefits in wetlands such as hunting, fishing, canoeing, bird watching and hiking.
  8. Prevent the loss of the visual and aesthetic qualities of wetlands including their contribution to open space, character, and overall scenic beauty of the landscape.
- B. Ensure the protection of wetland buffer areas from activities that would adversely affect them, including but not limited to the following:
  1. Prevent erosion and sedimentation by stabilizing soil adjacent to wetlands and surface waters.
  2. Moderate the effects of stormwater runoff into wetlands and surface waters by filtering sediment, nutrients and harmful or toxic substances, and moderating thermal discharges.
  3. Protect and maintain wetland wildlife habitat in the buffer zone of wetlands and surface waters.
  4. Support and protect native vegetation in the buffer zone of wetlands and surface waters.
  5. Reduce disturbances to wetland resources caused by human activity in the buffer zone of wetlands and surface waters.

- C. Prevent the unnecessary expenditure of municipal funds for the purposes of providing and or maintaining essential services and utilities that might be required as a result of the destruction or degradation of wetlands or surface waters.

## **Section 1602 Definitions**

**Best Management Practices:** As promulgated by the state of New Hampshire, measures or practices used to minimize impacts on wetlands and water resources, such as those used to control erosion, reduce sedimentation or prevent other forms of water quality degradation.

**Bog:** A wetland distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soil or water conditions.

**Buffer:** A naturally vegetated area adjacent to wetlands or surface waters that in its undisturbed and natural condition is integral to the performance and protection of wetland functions and values and water quality.

**Certified Soil Scientist:** A person who, by reason of special knowledge of pedagogical principles acquired by professional education and practical experience, as specified by RSA 310-A: 84(I), is qualified to practice soil science, and who has been duly certified by the State Board of Natural Scientists.

**Certified Wetlands Scientist:** A person who, by reason of multi-disciplinary expertise in wetland science acquired by professional education and practical experience, as specified by RSA 310-A: 84(II-a), is qualified to practice wetland science, and who has been duly certified by the State Board of Natural Scientists.

**Contiguous:** Immediately adjacent to, or, in the case of surface water or wetlands, hydrologically connected in a direct and proximal way – i.e. damage or degradation to one resource may cause damage or degradation to the contiguous resource.

**Drainageway:** Includes all surface water conveyances that transmit surface runoff from single storm events, or flows from highly localized snowmelt, or flows from man-made drainage devices that intercept ground water. Except in the case of drainage devices that intercept ground water, flows along these conveyances are typically very brief. Drainageways may be natural features, such as a hillside swale (depression) or rill (streamlet), or they can be man-made features, such as a ditch or a storm drain pipe.

**Dredge:** To dig, excavate, or otherwise disturb the contour or integrity of sediments in the bank or bed of a wetland or surface water body.

**Ecological Communities:** Any naturally occurring group of species inhabiting a common environment, interacting with each other especially through food relationships and relatively independent of other groups.

**Exemplary Wetlands:** A classification of wetlands based on the wetland assessment conducted by the *Comparative Evaluation of Non-tidal Wetlands in New Hampshire* (1991) or 'NH Method' (13 functions), and on the wetland size and the water resources protection goal in the Effingham master plan (i.e. protection of high quality wetlands; protection of drinking water supplies; protection of rare, endangered, exemplary natural communities; protection against flood damage; protection against sedimentation, nutrients, pollutants in town waters). Exemplary wetlands includes those wetlands that exceed the mean rank score for 23 wetlands assessed during 2005-2007 as part of the wetland inventory project (*Final Report on the 2005-2007 Wetland Inventory & Protection Project of the Town of Effingham*, June 30, 2007;

submitted to the New Hampshire State Conservation Committee on Contract # 150615), as depicted on the Town Wetlands Map.

**Fill:** Any rock, soil, gravel, sand or other such material that has been deposited or caused to be deposited by human activity. To place or deposit materials in or on a wetland, surface water body, bank or otherwise in or on an area within the jurisdiction of the DES.

**Fourth Order Stream:** Stream order is a descriptor used in a system (developed by Arthur Strahler) to classify streams based on the number of tributaries upstream. Stream order is determined using the New Hampshire hydrography dataset archived by GRANIT (geographically referenced analysis and information transfer system) at the Complex Systems Research Center of the University of New Hampshire. The headwater year-round streams in a watershed are first order streams, their juncture yields second order streams, the juncture of two second order streams yields a third order stream, and the juncture of two third order streams yields a fourth order stream, and so on. Pine River downstream from its juncture with Wilkinson Brook is considered a fourth order stream. Ossipee River is considered a sixth order stream. Fourth order and larger streams are protected under the Comprehensive Shoreland Protection Act (CSPA), as amended.

**Hydric Soils:** Soils that are saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part, as defined by the USDA Soil Conservation Service; National Technical Committee for Hydric Soils.

**Hydrophytic Vegetation:** Plant adapted for life in water or saturated soils. An individual plant may be referred to as a “hydrophyte.” This characteristic is determined using the U.S. Fish and Wildlife Service (USFWS) 1988 list – *National List of Plant Species That Occur in Wetlands*, and methods as described in the *US Army Corps of Engineers Wetlands Delineation Manual*.

**Intermittent Stream:** A stream that flows for sufficient time to develop and maintain a defined channel, but which might not flow during dry portions of the year.

**Lakes and Ponds:** Surface waters of the state subject to the same water quality standards, under state law (RSA 485-A) and administrative rules (Env-Ws 1700).

**Marsh:** A wetland: a) that is distinguished by the absence of trees and shrubs; b) dominated by soft-stemmed herbaceous plants such as grasses, reeds, and sedges; and c) where the water table is at or above the surface throughout most of the year, but can fluctuate seasonally (A marsh is considered surface water under NH state law).

**Natural Communities:** Natural communities are groups of plants and animals that recur in predictable patterns across the landscape under similar physical conditions.

**Open Space:** Undeveloped land that is not built upon or substantially altered by human activity. Such areas may contain, but are not limited to, forests, farmland, fields, floodplains, wetlands, and shorelands. Open space can also encompass scenic vistas, recreational areas and historic sites.

**Special Use Permit:** A permit that may be granted by the Planning Board for a use not otherwise permitted under the Wetlands Article.

**Surface Waters:** “Waters of the state,” as defined by RSA 482A:4, which have standing or flowing water at or above the surface of the ground for at least part of the year. This includes but is not limited to rivers, streams, lakes, ponds, swamps, vernal pools and bogs.

**Swamp:** A wetland that is dominated by trees and/or shrubs.

**Toxic and Hazardous Materials:** Any materials and/or substances that are regulated under the NH Solid Waste Rules, Administrative Rules Env-Ws 100-300 and Env-Ws 2100-2800 administered by the NHDES Waste Management Division.

**Vernal Pool:** An ephemeral body of water that is typically isolated from other wetlands or surface waters, lacks viable fish population and supports a specialized suite of amphibians and invertebrates. Documentation of the presence of a vernal pool includes but is not limited to direct, on-site evidence of one or more of the following: 1) breeding wood frogs (*Rana sylvatica*); 2) breeding mole (*Ambystomid*) salamanders; 3) fairy shrimp (*Identification and Documentation of Vernal Pools in New Hampshire*, published by the New Hampshire Fish and Game Department's Nongame and Endangered Wildlife Program).

**Wetlands:** Those areas that are inundated or saturated by surface or ground waters at a frequency and duration sufficient to support, and that under normal conditions do support a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs, and similar areas.

**Wetland Functions and Values:** The capacity of a wetland to perform various services that benefit society and/or the natural ecosystem surrounding the wetland. Wetland functions and values include but are not limited to the following: 1) ecological integrity; 2) wildlife habitat; 3) groundwater recharge/discharge; 4) sediment and toxicant removal and attenuation; 5) floodwater storage and dissipation of erosive forces; 6) water-based recreation; 7) education/scientific research; 8) visual and aesthetic quality.

**Wetlands Hydrology:** In general terms, permanent or periodic inundation or soil saturation during the growing season sufficient to create hydric soil conditions in the upper part of the soil and support hydrophytic vegetation.

## **Section 1603 Wetlands**

### **1603.1 Delineation of Wetland Boundaries**

- A. Wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetland hydrology in accordance with the techniques outlined in the *Corps of Engineers Wetlands Delineation Manual*, Technical Report Y-87-1, (January 1987).
- B. The hydric soils component of a delineation produced under A. above shall be determined in accordance with the manual, *Field Indicators for Identifying Hydric Soils in New England* (Version 3, June 2004, or later version), published by the New England Interstate Water Pollution Control Commission.

### **1603.2 Wetlands Incorrectly Delineated**

- A. Where it is determined that an area has been incorrectly delineated as a wetland, is subject to questionable delineation or that an area not so designated was subsequently found to meet the criteria for wetlands designation, the Planning Board shall determine whether the regulations contained herein apply.
- B. The Planning Board shall make its judgment under this section upon the determination by a qualified soil or wetland scientist on the basis of additional on-site investigations or other suitable research. This evidence shall be acceptable only when presented in written form to the Planning Board. Any investigation or study deemed necessary by the Planning Board shall be conducted at the expense of the landowner, applicant or developer.



- C. The Planning Board and Conservation Commission may accept the comments, evidence, or testimony of any other qualified individual, agency or organization as is reasonably offered in the course of its review.

## **Section 1604 Buffers**

### **1604.1 Wetland Buffers**

- A. Buffer areas shall be required for all wetlands. All buffers shall be measured at a horizontal distance from the wetland boundary. The width of the wetland buffer shall be as follows:
- |   |          |
|---|----------|
| Wetlands contiguous to surface waters.              | 100 feet |
| Isolated wetlands not contiguous to surface waters: |          |
| 1. Wetlands less than 3000 sq. ft. in area          | 25 feet  |
| 2. Wetland 3000 sq. ft or greater in area           | 50 feet  |
- B. Wetland buffers shall be retained in their natural condition. Where wetland buffer disturbance has occurred during construction for existing lots of record, where buffer intrusion is necessary to allow reasonable use of the lot, re-grading to original contours and re-vegetation shall be required.

### **1604.2 Surface Water Buffers**

- A. Buffer areas shall be required for all surface water bodies. All buffers shall be measured at a horizontal distance from the mean high water mark for lakes and ponds, and from the “top of bank” for rivers and streams, as defined by the NH Department of Environmental Services. The width of the buffer for surface water bodies shall be as follows:
- |   |          |
|---|----------|
| Exemplary Wetlands  | 150 feet |
| Lakes and Ponds of less than ten acres, Marshes,  |          |
| Bogs, Vernal Pools  | 100 feet |
| Perennial Streams   | 100 feet |
| Intermittent and Seasonal streams   |          |
| 1. Streams not contiguous to surface waters   | 25 feet  |
| 2. Streams contiguous to surface waters   | 50 feet  |
| Lakes and Ponds larger than ten acres, Fourth and larger order streams                                  |          |
| will follow the buffer requirements outlined in the Comprehensive Shoreland Protection Act (RSA 483-B). |          |
- B. Surface water buffers shall be retained in their natural condition except as allowed by RSA 483-B: Comprehensive Shoreland Protection Act. Where surface water buffer disturbance has occurred during construction, re-grading to original contours and re-vegetation shall be required.

## **Section 1605 Permitted Uses in Wetlands and Wetlands Buffers**

- A. The maintenance of existing uses, structures, driveways, parking areas, landscaping and septic disposal systems. Such uses shall not include the removal or deposition of materials from or into a wetland without first being granted a Special Use Permit.
- B. Within wetland buffers, if no alternative exists, the construction of driveways accessing one and two family dwellings.
- C. Timber harvesting and forestry operations which (a) utilize best management practices as described in Best Management Practices for Erosion Control on Timber Harvesting Operation in NH (*Best Management Practices for Forestry: Protecting*

*New Hampshire's Water Quality, 2005:*

<http://extension.unh.edu/Forestry/Pubs/BMPBook.pdf>); (b) comply with all applicable state laws including but not limited to: obtaining and filing an intent to cut form according to RSA 79:10 and filing a complete 'Notification of Forest Management Activities having Minimum Impact' according to RSA 482-A and RSA 483-B.

- D. The following uses are permitted provided that (a) they are consistent with the purposes and intent of this article; (b) they do not involve the erection or construction of a building or structure; (c) they do not involve the re-contouring of the land; (d) no draining, dredging, filling or change in the flow of water will result; and (e) the activity will not result in the pollution of wetlands, surface water, or ground waters.
1. Except as regulated in section 1607F., agricultural activities and operations, as defined in RSA 21:34a and as governed by RSA 430, provided such activities and operations are in conformance with the most recent best management practices determined by the US Department of Agriculture Natural Resource Conservation Service, the NH Department of Agriculture, and/or UNH Cooperative Extension.
  2. Outdoor recreational activities such as hunting, hiking, fishing, swimming and boating.
  3. Wildlife or fisheries management activities.
  4. Educational activities and scientific research.
  5. Conservation of open space.
  6. Activities incidental to normal ground maintenance including mowing, trimming of vegetation and removal of dead or diseased vegetation. This shall not include the altering of existing grades or contours of land, or the clearing of vegetation.
  7. Installation and maintenance of water wells and their appurtenances.
- E. Shoreland development and maintenance as allowed by RSA 483-B, the Comprehensive Shoreland Protection Act, as amended.
- F. No person shall conduct other uses without first obtaining a Special Use Permit.

#### **Section 1606 Prohibited Uses in Wetlands and Wetlands Buffers**

- A. The establishment or expansion of:
1. Salt storage sheds
  2. Automobile junk yards
  3. Solid or hazardous waste facilities
- B. The bulk storage of chemicals, petroleum products, or toxic and hazardous materials.
- C. Mining; continuous access of livestock and/or penning of poultry or fowl that does not comply with the manual of Best Management Practices (BMPS) for agriculture in NH as published by NH Department of Agriculture, Markets and Food; clear cutting

of forests; application of pesticides and chemicals except low phosphorous, slow-release nitrogen fertilizer, lime or wood ash.

### **Section 1607 Uses Requiring a Special Use Permit**

Except as allowed in Section 1605, the following uses in Wetlands and Wetland Buffers require a Special Use Permit:

- A. On pre-existing lots of record; within wetland and buffer zones, where no alternative exists, the construction of one and two family dwellings, accessory structures, but not closer than fifty feet to a wetland or surface water.
- B. Activities that alter or remove soils or vegetation including, but not necessarily limited to land clearing, dredging, draining or filling.
- C. Activities that alter the natural drainage system resulting in a change in the flow of water, water level or water table.
- D. The construction or alteration of structures, streets, roads, and other access ways including any appurtenances and utility right-of-way easements, including power lines and pipelines.
- E. Water impoundments for the purpose of creating a waterbody for wildlife, on-site detention of stormwater runoff and/or recreational uses, if essential to the productive use of land adjacent to the wetland or wetland buffer area.
- F. Agricultural activities as described in Section 1605 that occur inside of, or within 150 feet of, an Exemplary Wetland.

### **Section 1608 Standards for Granting a Special Use Permit**

#### **1608.1 Administration**

- A. The Planning Board shall be responsible for the administration of the Special Use Permit. The Planning Board shall hold at least one public hearing after public notice, as provided by RSA 676.7. An application shall be referred to the Conservation Commission for review and comment at least 30 days prior to the public hearing. The Planning Board shall act to approve or deny the application within 60 days of the public hearing, unless the applicant and the Planning Board agree to an extension for a set period of time.
- B. Any person found to be in violation of this article shall be subject to the enforcement proceedings of Section 1102 and Section 1609.
- C. Substantial construction must commence within one year of Planning Board approval of the Special Use Permit. If construction is not commenced within this period, the Special Use Permit may be extended for up to one year upon approval of the Planning Board. If construction is not commenced within this extended period the Special Use Permit is null and void.

#### **1608.2 Application Requirements**

- A. Applications for a Special Use Permit shall include the following:

1. Site Plan at a scale of 1"=100' or larger indicating the following:
    - a. Lot or lots of record to be impacted;
    - b. Names and addresses of abutting property owners;
    - c. Wetlands delineation, and name of person(s) performing said delineation and the date(s) that such delineation was performed;
    - d. Shading and computation of each of the wetland, surface water, and buffer area(s) to be impacted;
    - e. Soils type(s) (-in accordance with *Site Specific Soil Mapping Standards for New Hampshire and Vermont*, June 1997, as amended) within NCSS mapping standards developed by the USDA Soil Conservation Service in Cooperation with the Soil Society of Northern New England.);
    - f. Vegetation types;
    - g. Location of all drainageways and surface water bodies in vicinity of project area;
    - h. Other significant natural features;
    - i. Proposed land use/activities, including storm water management structures as needed.
  2. Project report including the following:
    - a. USGS topographic map showing location of proposed impact area;
    - b. Photographs mounted on 8.5 x 11" white paper of proposed impact area;
    - c. Description of the ecological communities;
    - d. Effects of the impact on the wetland and its functions;
    - e. Measures taken to minimize the impact;
    - f. Proposed land use/activities, sediment and erosion control plan, and monitoring and mitigation plan as required by the NH Department of Environmental Services.
- B. The site plan submitted for a subdivision or site plan review application to the Planning Board is acceptable if it meets all of the above requirements.
- C. The Planning Board may waive the requirements for part of the Special Use Permit if it determines that the requirements are unnecessary because of size, character, or natural conditions of a site.

### **1608.3 Minor Adjustments**

- A. A minor adjustment is a reduction in buffer width over a portion of a property in exchange for an increase in buffer width elsewhere on the same property such that the average buffer width remains as in section 1604. No minor adjustment can decrease buffer width to 25 feet less than the buffer width in section 1604 (never below a 50 feet buffer width).

- B. Each applicant for a minor adjustment must submit documentation that issuance of the adjustment will not result in a reduction in water quality and other functions/values under this Article. All minor adjustments shall adhere to the following criteria:
1. The width of the buffer shall be reduced by the minimum amount possible, and never more than 25 feet less than the buffer width in section 1604 (never below 50 feet minimum buffer) at any point; and
  2. Reductions in the width of the buffer shall be balanced by corresponding increases in the buffer elsewhere on the same property, such that the total area included in the buffer is the same as if it were the width specified in section 1604.

#### **1608.4 Major Adjustments**

- A. A major adjustment is:
1. A reduction in buffer width that is not balanced by a corresponding increase in buffer width elsewhere on the same property, or
  2. A reduction in buffer width to less than that specified in 1608.3 that allows for "buffer averaging".
- A property owner may request a major adjustment from the requirements of the buffer by filing a Major Adjustment Application with the Planning Board as set forth below in B. Such requests shall be granted or denied based on the criteria set forth below in C and will be subject to the conditions set forth below in D.
- B. Each applicant for a major adjustment must provide documentation that describes:
1. Existing site conditions, including the status of the protected area;
  2. The needs and purpose for the proposed project;
  3. Justification for seeking the adjustment, including how buffer encroachment will be minimized to the greatest extent possible;
  4. A proposed mitigation plan that offsets the effects of the proposed encroachment during site preparation, construction, and post-construction phases.
- C. A major adjustment may be issued if:
1. It can be shown that such proposed use is not in conflict with any and all of the purposes and intentions listed in Section 1601 of this article; or
  2. The size, shape, or topography of the property, as of the effective date of this Article, is such that it is not possible to erect a structure without encroaching upon the buffer zone.
- D. Any major adjustment issued will meet the following conditions:
1. The width of the buffer is reduced only by the minimum extent necessary to provide relief;
  2. Land-disturbing activities must comply with the requirements of the New Hampshire Comprehensive Shoreland Protection Act (RSA 483-B), RSA 485-C: Groundwater Protection Act, other State regulations, such as Fill and Dredge in Wetlands (RSA 482-A) and all applicable best management practices. Such activities shall not impair water quality, as defined by the Federal Clean Water Act and the New Hampshire State regulations (RSA 485: New Hampshire Safe Drinking Water Act);
  3. As an additional condition of issuing the adjustment, the Board may require water quality monitoring downstream from the site of land-disturbing activities to ensure that water quality is not impaired.

### **Section 1609 Enforcement**

- A. The Planning Board is hereby authorized and empowered to adopt such procedures and require such reasonable fees as are necessary for the efficient administration of this article.
- B. The applicant is responsible for all costs of special investigative studies determined necessary by the Planning Board.
- C. Upon any well founded information that this article is being violated, the Selectmen or their appointed agent shall notify, in writing, the owner or tenant of the property on which the violation is alleged to occur with a copy of such notification to the Planning Board and Conservation Commission. If appropriate, the Selectmen shall also notify the NH Wetlands Bureau, US Army Corps of Engineers, the U.S. Environmental Protection Agency, or such other State or Federal Agency as may have jurisdiction of the violation.

### **Section 1610 Special Provision – Exemplary Wetlands**

By virtue of the “size, unspoiled character, fragile condition, or other relevant factors,” and the findings of the 2005-2007 *Wetlands Inventory and Protection Project*, the following wetlands in the town of Effingham are listed as Exemplary Wetlands and depicted on the Town Wetlands Map:

|                |                                   |
|----------------|-----------------------------------|
| <b>1610.1</b>  | Lower Pine River – Heath Pond Bog |
| <b>1610.2</b>  | Pine River Complex – Central      |
| <b>1610.3</b>  | Province Lake – Northwest         |
| <b>1610.4</b>  | South River Marsh                 |
| <b>1610.5</b>  | Upper South River                 |
| <b>1610.6</b>  | Watts Wildlife Sanctuary          |
| <b>1610.7</b>  | Wilkinson Swamp – Upper           |
| <b>1610.8</b>  | Wilkinson Swamp – Lower           |
| <b>1610.9</b>  | Colcord Hill Road – South         |
| <b>1610.10</b> | Leavitt Brook Complex             |
| <b>1610.11</b> | Phillips Brook Complex            |

## **ARTICLE 17 STEEP SLOPES AND CRITICAL ELEVATIONS**

### **Section 1701 Purpose and Intent**

Purpose: The purpose of the Steep Slopes and Critical Elevations Article is to protect the public health, safety, and general welfare by controlling and guiding the use of land with slopes greater than 15% and/or elevations 1300 feet or greater because these areas are especially subject to erosion and excess runoff.

Intent: It is intended that the provisions of this Article shall:

- A. Promote the general health, safety, and welfare of the community by regulating the disruption of land within the Steep Slopes and Critical Elevation areas.
- B. Reduce damage to streams and lakes from erosion, storm water run off resulting from site construction or development.

- C. Preserve vegetative cover and wildlife habitat.
- D. Reduce damage to streams; lakes and public health caused by effluent from improperly sited sewage disposal systems.
- E. Permit use of land, which can be safely located on steep slopes and critical elevation areas.
- F. Prevent unnecessary or excessive expense to the Town to provide and maintain essential services and utilities, which arise because of misuse of Steep Slopes and Critical Areas.

### **Section 1702 Definitions**

***Abutter:*** As defined by RSA 672:3. The names of abutters, for the purposes of notification, shall be obtained from the Town Tax list, as it exists in the Municipal Offices.

***Best Management Practices:*** A proven or accepted structural, non-structural, or vegetative measure the application of which reduces erosion, sediment, or peak storm discharge, or improves the quality of storm water runoff. Measures or practices used to minimize the impact on steep slopes and critical elevation areas, such as those used to control erosion or reduce soil degradation as referenced in Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire by J.B. Cullen, 1990, or as amended; and Best Management Practices for Erosion Control During Trail Maintenance and Construction, NH Department of Resources and Economic Development, 1994, or as amended.

***Critical Elevation Area:*** All areas whose elevation is 1300 feet or greater.

***Critical Area:*** Area within 100 feet of a stream, bog, water body or very poorly drained soils; areas exceeding 2,000 square feet in highly erodible soils; or areas containing slopes 25% or greater.

***Development:*** Any construction or land construction or grading activities other than for agricultural and silvicultural practices.

***Erosion:*** The detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

***Steep Slope:*** Any area with a slope greater than 15% measured over 100 feet.

***Steep Slope Permit:*** A permit granted by the Planning Board for a use not otherwise permitted under the Steep Slope Article.

### **Section 1703 Uses Requiring a Steep Slope Permit**

An application must be submitted to the Planning Board for any tract of land being developed on a Steep Slope or in a Critical Elevation area, where one or more of the following are proposed:

- A. Cumulative disturbed area exceeding 20,000 square feet.
- B. Construction or reconstruction of a street, road, or driveway.
- C. Disturbance of critical areas.

## **Section 1704 Standards for Granting a Steep Slopes Permit**

### **1704.1 Administration**

- A. The Planning Board shall be responsible for the administration of the Steep Slope Permit. The Planning Board shall hold at least one public hearing after public notice during the Steep Slope Permit review. The Planning Board shall review the application under RSA 676:4Ic.
- B. Any person found to be conducting or maintaining an activity without the prior authorization of the Planning Board, or violating any other provision of this Article, shall be subject to the enforcement proceedings and penalties prescribed in Section 1707 of this Article and any other remedies provided by law.
- C. If granted, the Steep Slope Permit shall be valid for a period of two years from the date of issue and shall expire if not implemented by that time, unless a longer period is specified and approved by the Planning Board.
- D. The Planning Board may waive the requirements for all, or part, of the steep slope permit if it determines that the requirements are unnecessary because of size, character, or natural conditions of a site.
- E. If disapproved, a written list of plan deficiencies and the procedure for filing a revised plan will be given to the applicant.
- F. The Planning Board may require an environmental impact study or other professional reports to address specific issues.

### **1704.2 Application Requirements**

- A.** Form submission: A completed Steep Slope Application form together with appropriate fee.
- B.** Operational Plan: A written plan prepared by a New Hampshire licensed Civil Engineer or Erosion and Sediment Control Specialist must be submitted and must include the following:
  - 1. Project description
  - 2. Existing site conditions including current use, topography, storm water patterns, soils, wetlands.
  - 3. Proposed development.
  - 4. Structural measures for erosion control and sedimentation control based on Best Management Practices as defined in this Article.
  - 5. Temporary nonstructural measures.
  - 6. Permanent nonstructural measures.
  - 7. Schedule.
  - 8. Maintenance.



C. Site Plan: A Site Plan prepared by a New Hampshire Licensed Civil Engineer shall comply with the plat requirements specified by the Town of Effingham's Site Plan regulations. In addition, the layout shall show the boundaries of the proposed operation within the property lines, the location and size of the proposed buildings and other areas where the existing vegetative cover would be disturbed. It shall also show the location of all the measures taken by the operation plan.

#### **1704.3 Applicant Requirements**

- A. All requests for waivers and actions thereon shall be made in writing by the applicant with supporting technical documentation to demonstrate minimal environmental impact
- B. The applicant shall bear all financial responsibility for plans and layouts deemed necessary by the Planning Board according to the Steep Slopes and Critical Elevation Article.
- C. The applicant shall bear final responsibility for the installation, construction, inspection, and disposition of all storm water management and control measures required by the provisions of this regulation.

#### **Section 1705 Timber Harvesting:**

Timber harvesting and forestry operations which (a) utilize best management practices as described in Best Management Practices for Erosion Control on Timber Harvesting Operations in NH (*Best Management Practices for Forestry: Protecting New Hampshire's Water Quality*, 2005; <http://extension.unh.edu/Forestry/Pubs/BMPBook.pdf>) (b) comply with all applicable state laws are a permitted use and do not require a special use permit.

#### **Section 1706 Town Liability**

In any case where changes in topography alter the course of water flow, normal or excessive, so as to cause damage to the neighboring properties or those down-stream, environment, or critical habitat, the Town of Effingham shall be held harmless from any claims for damage resulting from the applicant's action, even if the applicant's Operational Plan has been approved by the Effingham Planning Board.

#### **Section 1707 Enforcement**

- A. The Planning Board is hereby authorized and empowered to adopt such rules and require such reasonable fees as are necessary for the efficient administration of this Article.
- B. The Enforcement Officer shall be responsible for enforcement of the provisions of this Article.
- C. Upon any well-founded information that this Article is being violated, the Planning Board or Conservation Commission shall report the violation to the Enforcement Officer. Upon receipt that this Article is being violated, the Enforcement Officer shall notify, in writing, the owner or tenant of the property on which the violation is alleged to occur with a copy of such notification to the Planning Board. If appropriate, the US Army Corps of Engineers, or such other State or Federal Agency, may be notified.
- D. Any person in violation of this Article or portion thereof, shall be penalized in accordance with NH RSA 676:15-17

## **ARTICLE 18 OPEN SPACE CONSERVATION SUBDIVISION**

### **Section 1801 Purpose**

The purpose of this Open Space/Conservation Subdivision Article is to conserve forest and agricultural lands, habitat, water quality and rural character that would likely be lost through conventional development. In addition to the objectives listed below, it is hoped that developers may achieve cost saving with Open Space Conservation Subdivision development because of the reduced requirements for constructing roads and other infrastructure.

This Article is enacted under the authority granted in RSA 674:21 (Innovative Land Use Controls).

### **Section 1802 Objectives**

1. Implement the goals outlined in the Effingham Master Plan.
2. Discourage development sprawl and consumption of rural agricultural, forest, habitat, and scenic land.
3. Conserve areas with productive soils for continued forestry and agricultural use by preserving blocks of land large enough to allow for economic and ecologically sensitive operations.
4. Encourage the preservation and enhancement of habitat for plant and animal communities.
5. Minimize site disturbance and erosion through retention of existing vegetation and avoiding development in sensitive areas.
6. Conserve land that protects water quality and quantity, including watersheds and buffers along streams and rivers, wetlands and floodplains, ponds and lakes and land overlying aquifers.
7. Protect scenic views and special elements of rural character, such as historic settings, cultural features, archeological sites and structures that serve as significant visible reminders of Effingham's history, including cellar holes and stone walls.
8. Create compact developments accessible to open space amenities by providing for outdoor recreational needs of the subdivision residents and/or the town at large, including trails, scenic and tranquil beauty, community gardens and playgrounds and other recreational uses such as snowmobiling, where appropriate.
9. Create continuous open space or "greenways" by linking the common open spaces in adjoining subdivisions wherever possible.
10. Minimize the impact of residential development on the town, neighboring properties, and the natural environment.
11. Locate the buildings and structures on those portions of each site that are most appropriate for development considering the visual impact and the environmental and conservation value of the site.
12. Minimize water runoff and non-point source pollution by reducing the land area covered by impervious surfaces.

### **Section 1803 Definitions**

**Buildable Area:** Land area that does not have any of the following characteristics: Steep slopes in excess of 25%, wetlands as defined by the Effingham Special Use Article, rock outcroppings, floodplains, septic fields, rights-of-way, and footprints of common recreational facilities.

**Buildable Lot:** The smallest lot area established by the zoning Article on which a dwelling may be located.

**Conversation Easement:** A permanent legal restriction against future development and other activities as specified in the conservation easement deed. An easement may be worded to permit or restrict public access, allow or disallow recreational uses, allow or disallow other uses, such as limited development, agriculture, or forestry. Easements are tied to the title of the land, regardless of subsequent ownership.

**Conservation Subdivision:** An alternative form of subdivision where, instead of subdividing an entire tract into lots of conventional size, a similar number of building lots may be arranged on lots of reduced dimensions. Also referred to as OPEN SPACE SUBDIVISION.

**Construction Plan:** Maps or drawings accompanying a subdivision plat and showing the specific location and design of improvements to be installed in the subdivision in accordance with the requirement of the Planning Board as a condition of the approval of the subdivision plat.

**Deed Restriction:** See Restricted Covenant.

**Developer:** The owner of land proposed to be subdivided or their representative. Consent shall be required from the legal owners of the property.

**Easement:** A grant or reservation by an owner of land for the use of all or a portion of such by others, including the public, for a specific purpose or purposes and which must be included in the conveyance of land affected by such easement. The usage of the word "easement" for land platting purposes in these regulations means that such easement area is included within the dimensions and areas of the lots or parcels through which the easement may run, and is not to be separated -there from as in the case of a right-of-way.

**Farm/Agriculture:** Any land, buildings or structures on or in which agriculture and farming operations are carried out as the principal use, including all operations outlined in RSA 21:34:a II.

**Homeowners Association:** A private corporation, association, or other legal entity organized in accordance with state law and established by the developer or the member individuals for the benefit and enjoyment of its members, including oversight and management of common open space or facilities.

**Lot Line:** A line of record bounding a lot, which divides one lot from another lot or from a public or private street or any other public space.

**Open Space, Common:** Land within or related to a development, not individually owned or dedicated for public use, which is designed and intended for the common use or enjoyment of the residents of the development and/or the town and may include such complementary structures and improvements as are necessary, appropriate and approved by the Planning Board.

**Restricted Covenant:** A restriction on the use of land usually set forth in the deed for the property.

**Sketch Plan:** A preparatory sketch to the preliminary subdivision plat layout to enable the subdivider to save time and expense in reaching general agreement with the Planning Board as to the form of the plat and the objectives of these regulations.

#### **Section 1804 Applicability**

Open Space/Conservation Subdivision is allowed in all zoning districts by Planning Board approval. Open Space/ Conservation Subdivision will provide a more efficient use of land resulting in the preservation of natural landforms, wetlands, wildlife and waterfowl habitats, significant vegetation and forestlands and other natural resources.

##### **1804.1 Ten Acre Minimum**

In any residential or commercial subdivision consisting of 10 acres or more, an applicant may apply for an Open Space/Conservation Subdivision under this Article. The minimum acreage may be waived by the Planning Board in instances where an applicant demonstrates that the criteria in Section 1804.2 below are met, or in instances where the proposed conserved land will be contiguous with other conserved land.

##### **1804.2 Required for Special Land Features**

The Planning Board may require an applicant to use an Open Space/Conservation Subdivision design if the property is 10 acres or more and possesses one or more of the following special features:

- (a) Agricultural land with soils designated "prime" or of "statewide significance" by the U. S. Natural Resource Conservation Service soil survey;
- (b) Rare, threatened or endangered species or exemplary natural communities according to the New Hampshire Natural Heritage Inventory Department of Resources and Economic Development;
- (c) Frontage on a great pond or perennial stream or river as shown on topographical maps published by the U. S. Geological Survey, or prime wetland;
- (d) A portion of a snowmobile trail network shown on the most recent edition of the "Trail Map" published by the local Snowmobile Association;
- (e) A portion of an aquifer with transmissivity in excess of 1,000 sq. ft. per day as shown on the Stratified Drift Aquifer Maps published and updated by the NH Department of Environmental Services;

##### **1804.3 Phased Subdivision Applications**

This Open Space/Conservation Subdivision Article shall apply to the phased subdivision of a parcel 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 density permitted will be based upon the acreage and characteristics of the original parcel that existed as of the date of enactment of this Article.

#### **Section 1805 Density**

1. The intent of this Article 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 maximum number of building lots proposed in an Open Space/Conservation 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, except for bonus lots as determined below (see Chart 1).

3. Manufactured Housing is not permitted in Open Space/Conservation Subdivisions

#### **Section 1806 Ownership and Protection of Conservation Areas**

1806.1 Conservation areas provided by Open Space/Conservation Subdivisions shall be permanently protected as open space and shall be conveyed in one of the following ways, subject to the approval of the Planning Board:

- (a) To the Town of Effingham and accepted by the Board of Selectmen for park, open space or other specified conservation uses;
- (b) To the State of New Hampshire for permanent open space uses;
- (c) To a private non-profit organization that is exempt from taxation under Section 501(c)(3), or similar provision of the Internal Revenue Code and whose principal purpose is the conservation of open space and has the financial and organizational means for perpetual stewardship, such as the Audubon Society of New Hampshire; the Society for the Protection of New Hampshire Forests; the Nature Conservancy; or the Green Mountain Conservation Group;
- (d) To a corporation, trust, or other entity, such as a homeowners' association, owned or to be owned by the owners of lots or dwelling units within the subdivision; or
- (e) To a private landowner such as a farmer, forest manager, golfing club, or cross-country ski operator that will manage it for uses consistent with the purposes of this Article.

1806.2 Conveyances of land to the Town or State, under 1806.1. a. or b. of this Article will be subject to permanent deed restrictions. Conveyances of land to private entities, under 1806.1 c. through e. of this Article, will be subject to a permanent conservation easement granted to the Town of Effingham or an organization qualified under 1806.1. c., above, and recorded at the Carroll County Registry of Deeds. Provision of such deed restrictions or conservation easements are subject to the approval of the Planning Board and shall include:

- (a) No further subdivision;
- (b) No residential or industrial development;
- (c) No roads or commercial uses except for forestry, agriculture, or outdoor recreational activities conducted according to appropriate best management practices.

1806.3 General public access to the Conservation Areas will not be required unless the land is conveyed in fee simple to the Town or State or a specific public trail corridor easement is proposed. Except in such cases, the rights to post land and limit public access will remain with the landowner.

#### **Section 1807 Conservation Area Location and Design**

1807.1 Except as otherwise provided herein, a minimum of 50% of the property must be included in a Conservation Area. Exclusions from the build able area are steep slopes in excess of 25%, wetlands as defined by the Effingham Special Use Article, rock outcroppings, floodplains, septic fields, rights-of-way, and footprints of common recreational facilities.

1807.2 In evaluating the acceptability of proposed Conservation Area(s) the Planning Board shall consider the extent to which the location and design of the area achieves these objectives:

- (a) Large enough blocks of land are conserved to retain ecosystem function and habitat integrity;
- (b) Large enough blocks of land are conserved to sustain forestry or agricultural operations and buffer them from nearby development;
- (c) For trail or stream corridors, and shore land, wide enough buffers are provided from building lots (minimum of 75 feet);
- (d) Access to and/or benefits from the open space are provided to the greatest number of lots within the subdivision;
- (e) Linkages or contiguity with existing or potential Conservation Areas on abutting properties are provided;
- (f) Scenic views from public roads and prominent ridgelines are conserved as much as possible; and
- (g) Objectives of the Article listed in 1802 are most creatively and successfully achieved.

### **Section 1808 Site Planning Process**

The application process shall consist of one or more informal discussions, a conceptual design review, and a final plat review.

#### **1808.1 Informal Discussion**

The applicant is encouraged to schedule an informal discussion with the Planning Board to review the purposes and provisions of the Article with respect to the property, the intent of the applicant, and the conservation features of the property and the neighborhood context.

#### **1808.2 Conceptual Design Review**

The purpose of the conceptual plan is to identify issues, problems, and opportunities before the applicant incurs extensive engineering costs. Conceptual Design Review for an Open Space/Conservation Subdivision has four stages;

- (i) Identification of conservation features and the proposed Conservation Area(s);
- (ii) Calculation of number and location of building sites;
- (iii) Location of roads; and
- (iv) Location of lot lines

All other requirements of Design Review Phase Approval of the Effingham Subdivision Regulations shall also apply, unless deferred by the Planning Board until the Final Plat stage.

- (a) The applicant shall prepare a conceptual plan showing the conservation features and proposed Conservation Areas of the property, using the features listed in 1804.2 of this Article as a guide. The proposed Conservation Areas shall consist of a minimum of 50% of the area of the property. The plan shall show at a minimum:
  - (i) Contours based at least upon topographical maps published by the U.S. Geological Survey;
  - (ii) Unbuildable areas (wetlands, steep slopes, floodplains, outcrops)

- (iii) Aquifers, water bodies and perennial watercourses, NRCS soil types; Fields, tree line, utilities, roads, trails, historic and habitat features;
- (iv) Proposed Conservation Areas

(b) The applicant shall calculate the number of building lots to be allowed according to Chart 1 of this Article. The applicant shall locate the potential building sites and preliminary individual or centralized well and septic disposal areas. Potential sites shall be located to advance the purposes of this Article listed in 1801 to minimize impacts upon sensitive resources on the property and limit the amount of infrastructure needed to serve the development. When possible, building sites should be screened from existing public vantage points.

(c) The conceptual plan shall show the roads and curb cuts for the building sites. Wetland crossings and impacts upon sensitive resources shall be minimized. The applicant shall also lay out any trails needed to access the Conservation Area(s) from the building lots and roads.

(d) The applicant shall locate the lot lines for the building lots.

### **Section 1809 Final Plat Review**

Once the Conceptual Design has been approved, the acceptance and approval of the final plat will be considered according to the Effingham Subdivision Regulations. To prepare the final plat, engineering, and studies for topography, soils, septic design, wetlands delineation, road layout, and other features may be required as specified in the Effingham Subdivision Regulations. This stage will also include review of the proposal for ownership and uses of the Conservation Areas, stewardship of any conservation easements, and deed restrictions or conservation easement language assuring permanent protection of Conservation Areas, as required in Section 1808 of this Article.

CHART 1

| Category                           | Amount of Parcel in Conservation | 10-20 Acre Parcel       | 20-30 Acre Parcel       | 30-40 Acre Parcel       | 40-50 Acre Parcel       |
|------------------------------------|----------------------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| Conventional Subdivision (2 acres) | N/A                              | 1 lot per every 2 acres | 1 lot per every 2 acres | 1 lot per every 2 acres | 1 lot per every 2 acres |
| Conservation Subdivision           | 50%                              | +1 lot                  | +2 lots                 | +3 lots                 | +4 lots                 |
| Conservation Subdivision Bonus     | 60%                              | +2 lots                 | +3 lots                 | +4 lots                 | +5 lots                 |

Conventional Subdivision: This calls for a 2-acre minimum, allowing the parcel owner 1 build able lot per every 2 acres.

Conservation Subdivision: The 2 acre minimum does not apply. Fifty percent of the parcel must be designated for conservation, where no building would be permissible. In addition to the number of lots allowed under the conventional subdivision, the parcel owner would be allowed 1 additional build able lot for every 10 acres designated for Open Space. For parcels 20 acres or less where 50% is designated for Open Space, the parcel owner will be allowed 1 additional lot.

Bonus: A Conservation Subdivision bonus would be offered should the parcel owner elect to designate 60% of the parcel into Open Space. The bonus equates to an additional 2 build able lots in the remaining 40% of the parcel, in addition to the number of lots allowed under the conventional subdivision.

## **ARTICLE 19: FLOODPLAIN MANAGEMENT ORDINANCE**

### **SECTION 1901 PURPOSE**

Certain areas of the Town of Effingham, New Hampshire, are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968. Therefore, the Town of Effingham, New Hampshire has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as detailed in this Floodplain Management Ordinance.

This Ordinance establishes a permit system and review procedure for development activities in the designated flood hazard areas of the Town of Effingham, New Hampshire.

### **SECTION 1902 ESTABLISHMENT**

This ordinance, adopted pursuant to the authority of RSA 674:16, shall be known as the Town of Effingham Floodplain Management Ordinance. The regulations in this ordinance shall overlay and supplement the regulations in the Town of Effingham 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.

The following regulations in this ordinance shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for Carroll County, NH" dated March 19, 2013, together with the associated Flood Insurance Rate Maps dated March 19, 2013, which are declared to be a part of this ordinance and are hereby incorporated by reference.

### **SECTION 1903 PERMITS**

All proposed development in any special flood hazard area shall require a permit issued by the Board of Selectmen or its Agent.

### **SECTION 1904 CONSTRUCTION REQUIREMENTS**

The Board of Selectmen or its Agent shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction or substantial improvements shall:

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



## **SECTION 1905 WATER AND SEWER SYSTEMS**

Where new or replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area the applicant shall provide the Board of Selectmen or its Agent with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

## **SECTION 1906 CERTIFICATION**

For all new or substantially improved structures located in special flood hazard areas, the applicant shall furnish the following information to the Board of Selectmen or its Agent:

- a. the as-built elevation of the lowest floor (including basement) and include whether or not such structures contain a basement.
- b. if the structure has been floodproofed, the as-built elevation to which the structure was floodproofed.
- c. any certification of floodproofing.

The Board of Selectmen or its Agent shall maintain the aforementioned information for public inspection, and shall furnish such information upon request.

## **SECTION 1907 OTHER PERMITS**

The Board of Selectmen or its Agent shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U. S. C. 1334.

## **SECTION 1908 WATERCOURSES**

1. In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Board of Selectmen or its Agent, in addition to the copies required by the RSA 482-A: 3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the CEO, including notice of all scheduled hearings before the Wetlands Bureau.
2. The applicant shall submit to the Board of Selectmen or its Agent certification provided by a registered professional engineer assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
3. The Board of Selectmen or its Agent 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."
4. 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.

## **SECTION 1909 SPECIAL FLOOD HAZARD AREAS**

1. In special flood hazard areas the Board of Selectmen or its Agent shall determine the 100-year flood elevation in the following order of precedence according to the data available:
  - a. In Zone AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.
  - c. In Zone A the Board of Selectmen or its Agent shall obtain, review, and reasonably utilize any 100-year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).
  - c. In Zone A where a 100-year flood elevation is not known, the flood elevation shall be the highest adjacent grade.
2. The Board of Selectmen or its Agent's 100-year flood elevation determination will be used as criteria for requiring in Zone A and AE that:
  - a. All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated 2 feet or more above the 100-year flood elevation.
  - b. That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated 2 feet or more above the 100-year flood level; or together with attendant utility and sanitary facilities, shall:
    - (i) be floodproofed 2 feet or more above the 100-year flood elevation so that below this elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - (ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
    - (iii) 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.
  - 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 elevated 2 feet or more above the 100-year flood elevation; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
  - d. All recreational vehicles placed on sites within Zone A and AE shall either:
    - (i) be on the site for fewer than 120 aggregate 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" in Paragraph (c) (6) of Section 60.3.

- e. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:
  - (i) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;
  - (ii) the area is not a basement; and
  - (iii) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

## **SECTION 1910 VARIANCES AND APPEALS**

1. Any order, requirement, decision or determination of the Board of Selectmen or its Agent made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
2. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I (b), the applicant shall have the burden of showing in addition to the usual variance standards under state law that:
  - a. the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
  - b. if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result; and
  - c. the variance is the minimum necessary, considering the flood hazard, to afford relief.
3. The Zoning Board of Adjustment shall notify the applicant in writing that:
  - a. 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
  - b. such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

4. The community shall:
  - a. maintain a record of all variance actions, including their justification for their issuance; and

- b. report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

## **SECTION 1911 DEFINITIONS**

The following definitions shall apply only to this Floodplain Management Ordinance, and shall not be affected by the provisions of any other ordinance of the Town of Effingham.

1. "Area of Special Flood Hazard" is the land in the floodplain within the Town of Effingham subject to a one-percent or greater possibility of flooding in any given year. The area is designated as Zone A and AE on the Flood Insurance Rate Map.
2. "Base Flood" means the flood having a one-percent possibility of being equaled or exceeded in any given year.
3. "Basement" means any area of a building having its floor subgrade on all sides.
4. "Building" - see "structure".
5. "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operation or storage of equipment or materials.
6. "FEMA " means the Federal Emergency Management Agency.
7. "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
  - a. the overflow of inland or tidal waters, or
  - b. the unusual and rapid accumulation or runoff of surface waters from any source.
8. "Flood Hazard Boundary Map" (FHBM) means an official map of a community, issued by the Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special flood hazards have been designated as Zone A.
9. "Flood Insurance Rate Map" (FIRM) means an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.
10. "Flood Insurance Study" (FIS) means 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.
11. "Floodplain" or "Flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "Flooding").
12. "Flood proofing" means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.
13. "Floodway" - see "Regulatory Floodway".
14. "Functionally dependent use" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and ship

building/repair facilities but does not include long-term storage or related manufacturing facilities.

15. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
16. "Historic Structure" means 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 or a 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:
    - (i) by an approved state program as determined by the Secretary of the Interior, or
    - (ii) directly by the Secretary of the Interior in states without approved programs.
17. "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.
18. "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.
19. "Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
20. "Mean sea level" means the National Geodetic Vertical Datum (NGVD) of 1929 or other to which base flood elevations shown on a community's Flood Insurance Rate Maps are referenced.
21. "New construction" means, for the purposes 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 structures 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.
22. "100-year flood" - see "base flood"
23. "Recreational Vehicle" is defined as:

- 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.
24. "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.
25. "Special flood hazard area" - see "Area of Special Flood Hazard"
26. "Structure" means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
27. "Start of Construction" includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of 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 part of the main structure.
28. "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
29. "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. This term 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".
30. "Violation" means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.
31. "Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes

and frequencies in the floodplains.

## **Article 20 Workforce Housing**

### **Section 2001 Purpose**

The purpose of this Article is to accommodate the development of affordable workforce housing within the town of Effingham as provided by RSA 674:58-61, which seeks to ensure the continued availability of a diverse supply of home ownership and rental opportunities for affordable and workforce housing. Additionally, in implementing this Article, Effingham has considered the region's affordable housing need as defined in the Lakes Region Planning Commission's most recent Housing Needs Assessment.

### **Section 2002 Authority**

This workforce housing Article is adopted under the authority of RSA 674:58-61.

### **Section 2003 Definitions**

A. "Affordable" means housing with combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income as published annually by the Department of Housing and Urban Development (HUD).

B. "Multi-family housing" for the purpose of workforce housing developments, means a building or structure containing five (5) to eight (8) dwelling units, each designed for occupancy by an individual household.

C. "Workforce housing" means single-family and multi-family dwellings which are affordable through sale or rent to households that meet specific income requirements as stated in RSA 674:59. (For housing intended for sale, purchaser's income may be no more than 100 percent of the area median income for a 4-person household. For rental housing, renter's income may be no more than 60 percent of the area median income for a 3-person household for the metropolitan area or county. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this Article.)

### **Section 2004 Applicability**

A. In accordance with the provisions of this Article, workforce housing is permitted under the following conditions:

#### **1. Single Family Workforce Housing**

To meet the requirements of RSA 674:59, single family workforce housing will be permitted under the following conditions:

- a) Single family workforce housing is only allowed in the Rural Agricultural District
- b) Each single family dwelling will require a two (2) acre minimum lot size, two hundred (200) feet of frontage, and all setback requirements as per Article 4, Section 402.

#### **2. Multi-Family Workforce Housing**

To meet the requirements of RSA 674:59, multi-family workforce housing will be permitted under the following conditions:

- a) Multi-family workforce housing is only allowed along:
  - 1. That portion of Route 25 from the Ossipee River Bridge to the Ossipee town line, extending five hundred (500) feet each side from the center line of the road.
  - 2. The length of Route 153 from its intersection with Route 25 south to the Maine State line, extending five hundred (500) feet each side from the center line of the road.
- b) Multi-family workforce housing is not allowed in the Village or Historic Districts
- c) Minimum lot size requirement will be two (2) acres for the first dwelling unit, plus one-half ( $\frac{1}{2}$ ) acre for each additional dwelling unit (for a minimum of four (4) acres for the initial building). The same acreage applies to any additional multi-family buildings.
- d) Retention of existing vegetation will be based on a review by, and agreement with, the Planning Board.
- e) All lots on which these buildings are constructed must have an opaque wooded buffer along the road. If the lot does not have a natural wooded buffer of a mix of trees and shrubs, the developer will plant vegetation to provide such a barrier.
- f) Lot requires minimum of road frontage of two (200) hundred feet along Route 25 or Route 153, and access to the lot must be off said highway.
- g) Minimum setbacks for all buildings, parking areas, waste containers and accessory buildings shall be as follows:
  - 1. Front                      Seventy-five (75) feet
  - 2. Side and Rear          Fifty (50) feet
- h) Multi-family workforce housing applications require site plan review.

#### **Section 2005 Eligibility Requirements**

A. To ensure that the application is completed as permitted, the dwellings qualifying as affordable housing shall be made available for occupancy on approximately the same schedule as a project's market rate units, if any, except that the certificates of occupancy for the last 10 percent of the market rate units shall be withheld until certificates of occupancy have been issued for all the affordable and workforce housing units. A schedule setting forth the phasing of the total number of units in a project under this Article, along with a schedule setting forth the phasing of the required affordable and workforce housing units shall be established prior to the issuance of a building permit for any development subject to the provisions of this Article.

B. To ensure that only eligible households purchase/rent the designated workforce housing units, the purchaser/renter of an affordable and workforce housing unit must submit copies of their last three years' federal income tax returns and written certification verifying their annual income level, to document that they do not exceed the maximum level as established by this ordinance in Sections 2003 of this Article. The tax returns and written certification of income must be submitted to the developer of the housing units, or the developer's agent, prior to the transfer of title. A copy of the tax return and written certification of income must be submitted to all parties charged with administering and monitoring this ordinance, as set forth in Sections 2007 A through D of this Article, within 30 days following the transfer of title.

C. All applicants under this Article must submit the following data to ensure project affordability:

- 1. Number of units of workforce housing proposed for the project.
- 2. Project Cost Estimate including land, development and construction costs; financing, profit, and sales costs; and other cost factors.
- 3. Description of each unit's size, type, estimated cost and other relevant data.



4. Documentation of requirements for household eligibility as described in Section 2005 B of this Article.
5. All agreements established as part of Section 2006 A through C of this Article.

#### **Section 2006 Assurance of Continued Affordability**

In order to qualify as workforce housing under this Article, the developer must make a binding commitment that the workforce housing units will remain affordable as required by the New Hampshire Housing Finance Authority (NHHFA) subsidy lien and restrictive covenant. The subsidy lien and restrictive covenant established to meet this criterion must make the following continued affordability commitments:

- A. Workforce housing units offered for sale (single family dwellings) shall require a lien, granted to the Town of Effingham, be placed on each affordable unit. The value of the lien shall be equal to the difference between the fair market value of the unit and its reduced "affordable" sale price, which is indexed according to the qualifying income standards. The municipality's lien is inflated over time at a rate equal to the Consumer Price Index (CPI). Future maximum resale values shall be calculated as the fair market value minus the CPI adjusted lien value. The workforce housing units will comply with the affordability standards as specified in Section 2003 A and 2003 C.
- B. Affordable and workforce housing rental dwelling units (dwelling units) shall limit annual rent increases to the percentage increase in the area median income, except to the extent that further increases are made necessary by hardship or other unusual conditions.
- C. Deed restrictions, restrictive covenants, or contractual arrangements related to workforce housing units established under this Article must be documented on all plans filed with the Effingham Planning Board and the Registry of Deeds.

#### **Section 2007 Administration, Compliance and Monitoring**

- A. This Article shall be administered by the Planning Board. Applications for the provisions provided under this Article shall be made to the Planning Board and shall be part of the submission of an application for site plan or subdivision plan approval.
- B. No occupancy shall occur in any workforce housing unit without written confirmation of the income eligibility of the tenant or buyer of the workforce housing unit and confirmation of the rent or price of the workforce housing unit as documented by an executed lease or purchase and sale agreement.
- C. Monitoring for compliance with resale and rental restrictions on workforce units shall be the ongoing responsibility of the Board of Selectmen or its designee.
- D. The owner of a project containing affordable and workforce units for rent shall prepare an annual report, in compliance with NHHFA requirements, certifying that the gross rents of affordable and workforce units and the household income of tenants of affordable units have been maintained in accordance this Article. Such reports shall be submitted to the Board of Selectmen or its designee and shall list the contract rent and occupant household incomes of all affordable and workforce housing units for the calendar year.

### **Article 21 Small Wind Energy Systems**

#### **Section 2101 Purpose**

This small wind energy systems ordinance is enacted in accordance with RSA 674:62-66, and the purposes outlined in RSA 672:1-III-a. The purpose of this ordinance is to

accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

## **Section 2102 Definitions**

***Meteorological tower (met tower).*** Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

***Modification.*** Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

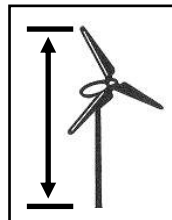
***Net metering.*** The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

***Power grid.*** The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

***Shadow flicker.*** The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

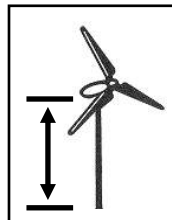
***Small wind energy system.*** A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

***System height.*** The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.



***Tower.*** The monopole, guyed monopole or lattice structure that supports a wind generator.

***Tower height.*** The height above grade of the fixed portion of the tower, excluding the wind generator.



**Wind generator.** The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

**Section 2103: Procedure for Review**

1. Building Permit: Small wind energy systems and met towers are an accessory use permitted in all zoning districts, with the exception of the Historic District and Province Lake District. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the Board of Selectmen or its Agent. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.
2. Application: Applications submitted to the Board of Selectmen or its Agent shall contain a site plan with the following information:
  - i) Property lines and physical dimensions of the applicant's property.
  - ii) Location, dimensions, and types of existing major structures on the property.
  - iii) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
  - iv) Tower foundation blueprints or drawings.
  - v) Tower blueprints or drawings.
  - vi) Setback requirements as outlined in this ordinance.
  - vii) The right-of-way of any public road that is contiguous with the property.
  - viii) Any overhead utility lines.
  - ix) Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
  - x) Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
  - xi) Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
  - xii) Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
  - xiii) Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
  - xiv) List of abutters to the applicant's property.
3. Abutter and Regional Notification: In accordance with RSA 674:66, the Board of Selectmen or its Agent shall notify all abutters and the local governing body by

certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the Board of Selectmen or its Agent prior to the issuance of the building permit. The Board of Selectmen or its Agent shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the Board of Selectmen or its Agent shall follow the procedures set forth in RSA 36:57, IV.

#### **Section 2104: Standards**

1. The Board of Selectmen or its Agent shall evaluate the application for compliance with the following standards;
  - a. Setbacks: The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

| Minimum Setback Requirements                           |   |   |              |
|--|---|---|--------------|
| Occupied Buildings on Participating Landowner Property | Occupied Buildings on Abutting Property | Property Lines of Abutting Property and Utility Lines | Public Roads |
| 0  | 1.5                                     | 1.5   | 1.5          |

- i) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
  - ii) Guy wires used to support the tower are exempt from the small wind energy system setback requirements.
- b. Tower: The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.
- c. Sound Level: The small wind energy system shall not exceed 55 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
- d. Shadow Flicker: Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
- e. Signs: All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.

- f. Code Compliance: The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.
- g. Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.
- h. Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.
  - i) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
  - ii) The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the surrounding environment. Approved colors include but are not limited to white, off-white or gray.
  - iii) A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
- i) Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.
- j) Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.
- k) Access: The tower and all ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- l) Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

### **Section 2105: Abandonment**

1. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the Board of Selectmen or its Agent by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
2. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the Board of Selectmen or its Agent. "Physically remove" shall include, but not be limited to:
  - a. Removal of the wind generator and tower and related above-grade structures.
  - b. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
3. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the Board of Selectmen or its Agent may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the Board of Selectmen or its Agent shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the Board of Selectmen or its Agent shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
4. If the owner fails to respond to the Notice of Abandonment or if, after review by the Board of Selectmen or its Agent, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the Board of Selectmen or its Agent may pursue legal action to have the small wind energy system removed at the owner's expense.

### **Section 2106: Violation**

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

### **Section 2107: Penalties**

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676:17.

## **ARTICLE 22 GROUNDWATER PROTECTION**

### **Section 2201 Authority**

The Town of Effingham hereby adopts this Article pursuant to the authority granted under RSA 674:16, in particular RSA 674:16, II relative to innovative land use controls.

### **Section 2202 Purpose**

The purpose of this Article is, in the interest of public health, safety, and general welfare, to preserve, maintain, and protect from contamination existing and potential groundwater supply areas and to protect surface waters that are fed by groundwater.

The purpose is to be accomplished by regulating land uses that may contribute pollutants to designated wells and to aquifers that provide current or future water supplies for this town and surrounding municipalities which share such wells and aquifers.

### **Section 2203 Groundwater Protection District**

The Groundwater Protection District is an overlay district superimposed over the existing underlying zoning as shown on the map entitled, Town of Effingham Groundwater Protection District, dated March 8, 2011, or the most current version, and includes within its boundaries:

1. All of the NH Department of Environmental Services approved Wellhead Protection Areas for public water supply wells, as defined under Section 2213, Definitions, 2213.14 and 2213.23 of this Article; and
2. All areas overlying the Stratified Drift Aquifers as described in *Geohydrology and Water Quality of Stratified Drift Aquifers in the Saco and Ossipee River Basins, East-Central New Hampshire*, USGS Water Resources Investigations Report 95-4182.

### **Section 2204 Exemptions**

The following uses are exempt from the specified provisions of this Article as long as they are in compliance with all applicable local, state, and federal requirements:

1. Any private residence, single-family, two-family, or multi-family, is exempt from all Performance Standards in Section 2210;
2. Any business or facility where regulated substances are stored in containers with a capacity of less than five gallons is exempt from Section 2210, Performance Standards, 5 through 8;
3. Existing on-premise-use facilities, as defined in Section 2213.11, are exempt from all Performance Standards in Section 2210.
4. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle is exempt from Section 2210, Performance Standards, 5 through 8;
5. Storage and use of office supplies is exempt from Section 2210, Performance Standards, 5 through 8;
6. Temporary storage of construction materials on a site where they are to be used is exempt from Section 2210, Performance Standards, 5 through 8 if incorporated within the site development project within six months of their deposit on the site;

7. The sale, transportation, and use of pesticides as defined in RSA 430:29 XXVI are exempt from all provisions of this Article;
8. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Wm 401.03(b)(1) and 501.01(b) are exempt from Section 2210, Performance Standards, 5 through 8;
9. Underground storage tank systems and aboveground storage tank systems that are in compliance with applicable state rules are exempt from inspections under Section 2212, Maintenance and Inspection, of this Article.
10. Agricultural activities as regulated by the NH Department of Agriculture, Markets, and Food are exempt from Section 2210, Performance Standards, 4 through 7, and Section 2208, Special Uses, 1, provided that such activities are conducted in accordance with:
  - a. Env-Wq 401, Best Management Practices for Groundwater Protection;
  - b. *Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire* (NH Department of Agriculture, Markets, and Food, July 2008, or any subsequent revisions).

#### **Section 2205**                      **Applicability**

This Article applies to all uses in the Groundwater Protection District, except for those uses exempt under Section 2204, Exemptions, of this Article.

#### **Section 2206**                      **Permitted Uses**

All uses permitted by right or allowed by special exception in the underlying district are permitted in the Groundwater Protection District unless they are Prohibited Uses or Special Uses as enumerated in the Article. All uses must comply with the Performance Standards of this Article unless specifically exempt under Section 2204, Exemptions.

#### **Section 2207**                      **Prohibited Uses**

The following uses are prohibited in the Groundwater Protection District.

1. The development or operation of a hazardous waste disposal facility as defined under RSA 147-A;
2. The development or operation of a solid waste landfill;
3. The outdoor storage of road salt or other deicing chemicals in bulk;
4. The development or operation of a junkyard;
5. The development or operation of a snow dump;
6. The development or operation of a wastewater or septage lagoon;
7. The development or operation of a petroleum bulk plant or terminal;
8. The development or operation of a gasoline station.



9. The development or operation of a golf course.
10. The development or operation of a dry cleaning facility.
11. The development or operation of a vehicle race track or vehicle proving grounds.
12. The development of a car/vehicle wash facility not utilizing closed system water recovery technologies

**Section 2208**                      **Uses Requiring a Special Use Permit**

2208.1 The Planning Board may grant a Special Use Permit, in accordance with the provisions of this Section, for a use otherwise permitted in the underlying district, if the permitted use is involved in one or more of the following:

1. Storage, handling, and use of regulated substances in quantities exceeding 100 gallons or 800 pounds dry weight at any one time, provided that an adequate spill prevention, control and countermeasure (SPCC) plan, in accordance with Section 2111, Spill Prevention Control and Countermeasure (SPCC) Plan, is approved by the Fire Chief;
2. Any use that will render impervious more than 15 percent or more than 2,500 square feet, whichever is greater, of the groundwater protection district area of any lot that is either wholly or partially within the groundwater protection district.
3. Any activities that involve blasting of bedrock.
4. The operation of car/vehicle wash facilities utilizing closed system water recovery technology.

2208.2 In granting such Special Use Permit approval the Planning Board must first determine that the proposed use is not a Prohibited Use, as listed in Section 2207, Prohibited Uses, of this Article, and will be in compliance with the Section 2210, Performance Standards, as well as all applicable local, state and federal requirements.

2208.3 The Planning Board may, at its discretion, require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure completion of construction of any facilities required for compliance with the Performance Standards of Section 2210.

2208.4 Applications for Special Use Permit shall include all applicable plans required under Section 2208.1 and Section 2210, Performance Standards, and must clearly demonstrate how all Performance Standards listed in Section 2210 will be met.

2208.5 A complete application for a Special Use Permit shall be submitted to the Planning Board at a regularly scheduled meeting and accompanied by a site plan drawn to an indicated scale and showing:

- locations and dimensions of all significant structures and uses present and proposed, including wells
- total impervious area that will result from proposed development, and a calculation of the percentage and square footage of impervious area within the groundwater protection district
- all stormwater filtration and infiltration practices and associated depths to the average seasonal high water table
- all areas of cut and fill
- all areas where regulated substances will be stored or transferred

- existing and proposed site drainage

The site plan submitted for subdivision or site plan application to the Planning Board is acceptable if it meets all of the above requirements.

2208.6 The Planning Board shall hold a public hearing for a Special Use Permit application, following public notice, within 30 days of acceptance of a complete application.

2208.7 Upon acceptance of a complete Special Use Permit application, the Planning Board shall transmit one copy of any Spill Prevention, Control, and Countermeasure Plan, furnished by the applicant, to the Fire Chief, as provided in Section 2208.1 and detailed in Section 2211, for his/her written recommendations and approval. The Planning Board shall transmit one copy of the complete application, furnished by the applicant, to the Conservation Commission for its written recommendations as well. Failure of the Fire Chief or Conservation Commission to respond within 30 days shall indicate their approval.

The Planning Board shall, within 30 days of a public hearing or within 60 days of accepting a complete Special Use Permit application, or within such other time limit as may be mutually agreed to, issue an order denying or granting approval of the application. The approval or denial of an application for a Special Use Permit shall be in writing and shall state the reasons for the decision. The Planning Board may attach such conditions to its approval as are reasonable, necessary and appropriate in order to serve the purpose of this Article.

2208.8 Substantial construction must commence within one year of Planning Board approval of the Special Use Permit. If construction is not commenced within this period, the Special Use Permit may be extended for up to one year upon approval of the Planning Board. If construction is not commenced within this extended period the Special Use Permit is null and void.

2208.9 For uses requiring Planning Board approval, a narrative description of maintenance requirements for structures required to comply with Performance Standards of Section 2210, Performance Standards, shall be recorded at the Carroll County Registry of Deeds so as to run with the land on which such structures are located. The description so prepared shall comply with the requirements of RSA 478:4-a.

2208.10 The applicant will be required to reimburse the Town for any reasonable expenses incurred by the Planning Board, Board of Selectmen and their designated officials, to evaluate the application before the facility is constructed, including but not limited to, expenses incurred to hire qualified engineers or other experts.

2208.11 The Planning Board, at its discretion, may waive any requirements for a Special Use Permit under the following conditions:

- a. Receipt by the applicant of a waiver from a state best management practice (BMP) regulation granted by the NH Department of Environmental Services; or
- b. For requirements that are not also state and/or federal regulations, if the applicant can satisfactorily demonstrate through alternative means that the intent of the requirements and the purpose of Article 22 will still be achieved.
- c. The decision to waive any requirement for a Special Use Permit, along with the basis for such waiver and means of compliance with the purpose of Article 22, shall be issued in writing. Planning Board meeting minutes shall not constitute a written decision to waive Special Use Permit requirements.

## **Section 2209                      Existing Nonconforming Uses**

Existing nonconforming uses may continue without expanding or changing to another nonconforming use, except as permitted by ARTICLE 7 of the Effingham Zoning Ordinance, but must be in compliance with all applicable state and federal requirements, including Env-Wq 401, Best Management Practices for Groundwater Protection.

## **Section 2210                      Performance Standards**

The following Performance Standards apply to all uses in the Groundwater Protection District unless exempt under Section 2204, Exemptions:

1. For any use that will render impervious more than 15 percent or more than 2,500 square feet of the groundwater protection district area of any lot, whichever is greater, a stormwater management plan shall be prepared which the planning board determines is consistent with *New Hampshire Stormwater Manual Volumes 1-3*, NH Department of Environmental Services December 2008 or any subsequent revisions.
2. Special uses, as defined under Section 2208, Special Uses, shall develop stormwater management and pollution prevention plans and include information consistent with *Developing Your Stormwater Pollution Prevention Plan: A Guide for Construction Sites*, US EPA #833R06004, May 2007 or any subsequent revisions. The plan shall demonstrate that the use will:
  - a. Meet minimum stormwater discharge setbacks between water supply wells and constructed stormwater practices as found within *Innovative Land Use Planning Techniques: A Handbook for Sustainable Development, Section 2.1 Permanent (Post-Construction) Stormwater Management*, (DES, 2008 or later edition);
  - b. Minimize, through a source control plan that identifies pollution prevention measures, the release of regulated substances into stormwater;
  - c. Stipulate that expansion or redevelopment activities shall require an amended stormwater plan and may not infiltrate stormwater through areas containing contaminated soils without completing a Phase I Assessment in conformance with ASTM E 1527-05, also referred to as All Appropriate Inquiry (AAI);
  - d. Maintain the following minimum vertical separation between the bottom of a stormwater practice and the average seasonal high water table as determined by a licensed hydrogeologist, soil scientist, engineer or other qualified professional as determined by the Planning Board: four foot vertical separation for a practice that infiltrates stormwater; one foot vertical separation for a practice that filters stormwater.
3. Animal manures, fertilizers, and compost must be stored in accordance with *Manual of Best Management Practices for Agriculture in New Hampshire*, NH Department of Agriculture, Markets, and Food, July 2008 and any subsequent revisions;
4. All regulated substances stored in containers with a capacity of five gallons or more must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains;
5. Facilities where regulated substances are stored must be secured against unauthorized entry by means of a door and/or gate that is locked when authorized personnel are not present and must be inspected weekly by the facility owner;

6. Outdoor storage areas for regulated substances, associated material or waste must be protected from exposure to precipitation and must be located at least 50 feet from surface water or storm drains, at least 75 feet from private wells, and outside the sanitary protective radius of wells used by public water systems;
7. Secondary containment must be provided for outdoor storage of regulated substances in regulated containers and the containment structure must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s);
8. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another;
9. Prior to any land disturbing activities, all inactive wells on the property not in use or properly maintained at the time the plan is submitted shall be considered abandoned and must be decommissioned in accordance with We 604, or must be properly maintained in accordance with We 603 of the New Hampshire Water Well Board Rules.
10. Blasting activities shall be planned and conducted to minimize groundwater contamination. Excavation activities should be planned and conducted to minimize adverse impacts to hydrology and the dewatering of nearby drinking water supply wells.
11. All transfers of petroleum from delivery trucks and storage containers over five gallons in capacity shall be conducted over an impervious surface having a positive limiting barrier at its perimeter.<sup>1</sup>

#### **Section 2211**                      **Spill Prevention, Control and Countermeasure Plan**

Special Uses, as described under Section 2208, Uses Requiring a Special Use Permit, 1, using regulated substances, shall submit a Spill Control and Countermeasure (SPCC) Plan to the Fire Chief who shall determine whether the plan will prevent, contain, and minimize releases from ordinary or catastrophic events such as spills, floods or fires that may cause large releases of regulated substances. It shall include:

1. A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas.
2. Contact list and phone numbers for the facility response coordinator, cleanup contractors, and all appropriate federal, state, and local agencies who must be contacted in case of a release to the environment.
3. A list of all regulated substances in use and locations of use and storage;
4. A prediction of the direction, rate of flow, and total quantity of regulated substance that could be released where experience indicates a potential for equipment failure.
5. A description of containment and/or diversionary structures or equipment to prevent regulated substances from infiltrating into the ground.

#### **Section 2212**                      **Maintenance and Inspection**

---

<sup>1</sup> A positive limiting barrier (PLB) is a depression (e.g., groove) in the surface of an otherwise level impervious area designed to impede the flow and contain spilled substances within the perimeter of the impervious area. PLBs are typically constructed and maintained to contain small spills or releases (five to fifteen gallons).

- 2212.1 For uses requiring Planning Board approval for any reason, a narrative description of maintenance requirements for structures required to comply with Section 2210, Performance Standards, shall be recorded so as to run with the land on which such structures are located, at the Carroll County Registry of Deeds. The description so prepared shall comply with the requirements of RSA 478:4-a.
- 2212.2 Inspections may be required to verify compliance with Performance Standards. Such inspections shall be performed by the Board of Selectmen or their designated agent at reasonable times with prior notice to the landowner.
- 2212.3 All properties in the Groundwater Protection District known to the Fire Chief as using or storing regulated substances in containers with a capacity of five gallons or more, except for facilities where all regulated substances storage is exempt from this Article under Section 2204, Exemptions, shall be subject to inspections under this Section.
- 2212.4 The Board of Selectmen may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule may be established by the Board of Selectmen as provided in RSA 41:9-a.

**Section 2213**                      **Definitions**

- 2213.1     Aquifer: a geologic formation composed of rock, sand, or gravel that contains significant amounts of potentially recoverable water.
- 2213.2     Car/vehicle Wash Facility: A facility used to wash motor vehicles as a separate or part of a commercial entity.
- 2213.3     Dry cleaner: An operation which cleans clothing with the use of substances consistent with dry cleaning operations and not using standard detergents and water methods.
- 2213.4     Gasoline station: means that portion of a property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and distributed for the purposes of retail sale of gasoline.
- 2213.5     Golf course: consisting of one or more golf links with a natural turf.
- 2213.6     Groundwater: subsurface water that occurs beneath the water table in soils and geologic formations.
- 2213.7     Impervious (*adj.*): not readily permitting the infiltration of water – including but not strictly limited to: non-porous asphalt, concrete or cement surfaces; compacted dirt/gravel roads, driveways, paths, and lots; non-permeable pavers; roof/building footprint areas (excluding sod/vegetated roofs, up to their designed retention capacity)
- 2213.8     Impervious surface (*noun phrase*): a surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Earthen; wooden, or gravel surfaces; or other surfaces which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces for the purposes of controlling regulated substances.
- 2213.9     Junkyard: an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automotive recycling yard. The word does not include any motor vehicle dealers

registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126.

- 2213.10 Outdoor storage: storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.
- 2213.11 On-premise-use facility means a system of storage tanks, pipes, pumps, and appurtenant structures, singly or in any combination, which is or has been used for the storage of fuel oil for on-premise-use.
- 2213.12 Petroleum bulk plant or terminal: means that portion of the property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and are stored or blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline tank car, tank vehicle, portable tank, or container.
- 2213.13 Primary recharge area: The area as delineated on the Town of Effingham Groundwater Protection District, dated March 8, 2011 (or the most current version), which contributes water to public drinking water wells and/or an aquifers.
- 2213.14 Public water system: a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.
- 2213.15 Regulated substance: petroleum, petroleum products, and substances listed under 40 CFR 302, 7-1-05 edition, excluding the following substances: (1) ammonia, (2) sodium hypochlorite, (3) sodium hydroxide, (4) acetic acid, (5) sulfuric acid, (6) potassium hydroxide, (7) potassium permanganate, and (8) propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure.
- 2213.16 Sanitary protective radius: The area around a public water supply well which must be maintained in its natural state as required by Env-Dw 301 or 302 (for community water systems); Env-Ws 373.12 and Env-Ws 372.14 (for other public water systems).
- 2213.17 Seasonal high water table: The depth from the mineral soil surface to the upper most soil horizon that contains 2% or more distinct or prominent redoximorphic features that increase in percentage with increasing depth as determined by a licensed Hydro geologist, Soils Scientist, Wetlands Scientist, Engineer or other qualified professional approved by the Planning Board.
- 2213.18 Secondary containment: a structure such as a berm or dike with an impervious surface which is adequate to hold at least 110 percent of the volume of the largest regulated-substances container that will be stored there.
- 2213.19 Snow dump: For the purposes of this Article, a location where snow, which is cleared from roadways and/or motor vehicle parking areas, is placed for disposal.
- 2213.20 Stratified-drift aquifer: A geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.
- 2213.21 Surface water: streams, lakes, ponds and tidal waters, including marshes, water-courses and other bodies of water, natural or artificial.
- 2213.22 Vehicle race track or proving grounds: a track or course, impervious or not, used to race or test vehicle performance as a commercial business or commercial club activity.

2213.23 Wellhead protection area: The surface and subsurface area surrounding a water well or wellfield supplying a community public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

**2214. RELATIONSHIP BETWEEN STATE AND LOCAL REQUIREMENTS**

Where both the State and the municipality have existing requirements the more stringent shall govern.

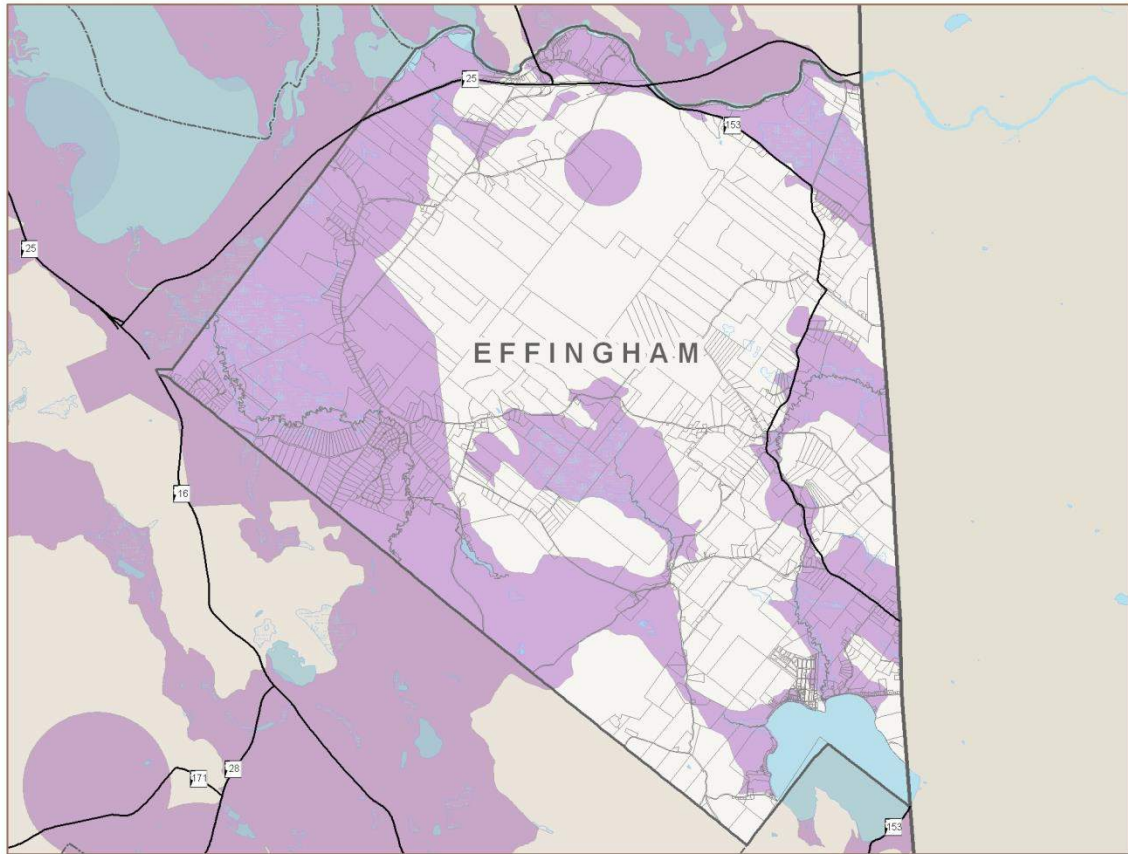
**2215. SAVING CLAUSE**

If any provision of this Article is found to be unenforceable, such provision shall be considered separable and shall not be construed to invalidate the remainder of the Article.

**2216. EFFECTIVE DATE**

This Article shall be effective upon adoption by the legislative body.

**Town of Effingham Groundwater Protection District  
March 8, 2011**



Map created by Lakes Region Planning Commission of geohydrology and water quality of stratified-drift aquifers in the Saco and Ossipee River basins, East-Central New Hampshire, USGS Water-Resources Investigations Report 94-4182.