



ZONING ORDINANCE

TOWN OF MILTON NEW HAMPSHIRE

Adopted 12/20/89
(Latest Revision 3/10/15)

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ARTICLE I

- A. PREAMBLE** - The Zoning Ordinance of the Town of Milton is adopted pursuant to and under the authority conferred by New Hampshire Revised Statutes Annotated Title LXIV, as amended.
- B. TITLE** - This ordinance shall be known and may be cited as the “Zoning Ordinance of the Town of Milton, New Hampshire,” effective December 20th 1989, and as amended March 10th 1992, March 12th 1996, March 11th 1997, March 10th 1998, March 9th 1999, March 13th 2001, March 12th 2003, March 9th 2004, May 18th 2004, March 9th 2005, March 15th 2006, March 14th 2007, March 11th 2009, March 9 2010 and as amended March 11, 2014.
- C. PURPOSE** - To establish regulations to more effectively meet the demands of the community, to enhance the public health, safety and general welfare of the Town of Milton, New Hampshire and to encourage the appropriate and wise use of land. To permit greater flexibility in design and to preserve more useable open space through a Cluster Development provision. To implement the Master Plan adopted in 1994 and to encourage a pattern of development consistent with a New England Village.
- D. CONFLICTS WITH OTHER REGULATIONS** - In the event that the requirements of this ordinance differ from another federal, state or local statute, ordinance or regulation, the more stringent requirement shall apply. In the event that the requirements within this ordinance are in conflict with one another, the more stringent requirement shall apply.
- E. ADMINISTRATION AND ENFORCEMENT** - The Milton Selectmen or their duly authorized representative are hereby designated to administer, implement and enforce the provisions of this Ordinance, in accordance with the New Hampshire Revised Statutes Annotated, as amended.
- F. PERMITS REQUIRED** - A permit shall be obtained from the administering authority prior to undertaking any activity regulated by this ordinance or for the construction, erection, alteration, movement or placement of any structure. The administering authority shall ensure that the proposed use or structure meets all the requirements of this ordinance.
- G. AMENDMENTS** - This ordinance may be amended by a majority vote of any legal Town Meeting, in accordance with the provisions of the New Hampshire Revised Statutes Annotated, as amended.
- H. ZONING MAP** - There shall be an Official Zoning Map for the Town of Milton, which depicts the base zoning district boundaries. The zoning map shall be available for public inspection at the Milton Planning Board Office and the Milton Town Office. This map shall be used for all interpretations of the base zoning district boundaries.
- I. LOTS SPLIT BY ZONING DISTRICT BOUNDARIES** - Where an existing lot of record falls into more than one zoning district, the following shall apply:
- a. For lots which are large enough to be subdivided, the provisions of each district shall be applied separately to each portion of the lot;
 - b. For lots which are not large enough to be subdivided, the provisions of the district which comprises the largest share of the lot shall apply to the entire lot.

ARTICLE II
DEFINITIONS
(Revised 3/09/10)

In this Ordinance, unless the context requires otherwise, the following terms have the meanings indicated:

1. **ABANDONMENT** - To stop the use of a property intentionally. When the use of a property has ceased and the property has been vacant for 24 months, abandonment of the use will be presumed unless the owner can demonstrate that a diligent effort has been made to sell, rent or use the property for a legally permissible use
2. **ABUTTER** - Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the Planning Board. For the purposes of receiving testimony only, and not for the purposes of notification, the term “abutter” shall include any person who is able to demonstrate that his or her land will be directly affected by the proposal under consideration. For the purpose of receipt of notification by the Town of a scheduled Planning Board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term of “abutter” means the officers of the collective or association as defined in RSA 356-B:3, XXIII. For the purpose of receipt of notification by the Town of a Planning Board hearing, in a case of an abutting property being under a manufactured park from of ownership as defined in RSA 205-A:1, II, the term “abutter” includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the Planning Board.
3. **ACCESSORY USE OR STRUCTURE** - A use or structure on the same lot with, and of a nature incidental and subordinate to, the principal use or structure.
4. **ACRE** - A measure of land equating to 43,560 square feet.
5. **ACTIVE OPEN SPACE** - Any park and recreational facility that is not dependent upon a specific environmental or natural resource, which is developed with recreation and support facilities that can be provided anywhere for the convenience of the user.
6. **AGRIBUSINESS** - Any business producing, processing or distributing agricultural products including forestry as defined in RSA 21:34-a, as amended.
7. **APARTMENT** - One or more rooms with private bath and kitchen facilities comprising of an independent, self-contained dwelling unite in a building containing two or more dwelling unites.
8. **APARTMENT BUILDING** - A residential building of three or more individual, attached dwelling units.
9. **ASSISTED LIVING FACILITY** – A residential facility for the elderly, developed and maintained in compliance with RSA –A: 15, Housing for Older Persons, that contains individual rooming units, and which may have common sanitary facilities, and within which common dining facilities and certain personal services such as housekeeping and laundry services, assistance in person care, as well as limited medical and nursing services, are provided to residents.
10. **AUTO SALES AND SERVICE** - Use of any building or land area for the display, sale and service

of new or used automobiles, including sport utility vehicles, light trucks, vans, trailers or recreational vehicles.

- 11. BED AND BREAKFAST ESTABLISHMENT** - An owner-occupied type of lodging facility wherein a single-family dwelling is used to provide eight or fewer rooming units for transient lodging and which may provide limited food service for guests or lodgers. A transient guest means persons renting for less than two consecutive weeks and no more than a total of six weeks per year.
- 12. BUFFER** – A naturally vegetated upland area adjacent to a wetland or surface water. Naturally vegetated includes the following: uncut or undisturbed forest minimally disturbed or managed forest, and abandoned pasture or fields. This definition comes from Buffers for Wetlands and Surface Waters, A guidebook for New Hampshire Municipalities, Chase, Deming and Latawiec, Revised May 1997.
- 13. BUILD** - The work "build" shall include the works "erect", "construct", "alter", "enlarge", "modify", "excavate", "fill", and any others of like significance.
- 13. BUILDING** - The word "building" shall include the word "structure" unless the context unequivocally indicates otherwise. "Building" shall also mean any three-dimensional enclosure by any building materials of any space for use or occupancy, temporary or permanent, and shall include foundations in the ground, also all parts of any kind of structure above ground except fences and field or garden walls or embankment retaining walls.
- 14. BUSINESS OFFICE** - Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, including all phases of the enumerated businesses.
- 15. CAMPING GROUND** - A plot of ground upon which two or more campsites are located, established or maintained for occupancy by camping units of the general public as temporary living quarters for recreation, education or vacation purposes.
- 16. CHILD DAY CARE FACILITY** - A facility and related services for children who are (12) years of age or younger, provided by a child day care agency as defined in RSA 170-E: 2, Definitions.
- 17. CHURCH** - Buildings used or intended for use as places for worship, or for other religious uses such as meetings, training or instruction.
- 18. COMMON OWNERSHIP** – Ownership by the same person, Corporation, firm, entity, partnership, or unincorporated association; or ownership by different corporations, firms, partnerships, entities, or unincorporated associations, in which a stockbroker, partner, or associate, or a member of his family owns an interest in each corporation, firm, partnership, entity, or unincorporated association.
- 19. COMMUNITY CENTER** – A building or structure, together with accessory buildings, structures, and appurtenances, owned and operated by a unit of government or non-profit organization for the provision of recreational, cultural, and social programs which may be oriented to a group of citizens of a specific range or to all citizens.

20. **CONDOMINIUM** - A building, or group of buildings, in which dwelling units, offices, or floor area are owned individually, and the structure, common areas and facilities are owned by all owners on a proportional undivided basis.
22. **CONSERVATION LAND** - Land given to a public body dedicated to conservation of forests, park lands, deed restricted areas, etc. or to a private conservation trust, with the intent of preserving it in its original undeveloped condition, safeguarding water supplies, or diminishing flood danger.
23. **CONSERVATION SUBDIVISION** - A subdivision wherein single-family dwellings are laid out on lots of reduced dimensions, or in clustered groupings, in order to preserve open space on the parcel, as provided for under the terms of this Ordinance. The proposed subdivision would be designed consistent with Article IX Conservation Subdivision.
24. **CONTIGUOUS** - The term contiguous shall be construed to mean areas that form or represent a single unit of similar features or features that are touching at a common property line or other type of boundary.
25. **DENSITY** - The number of dwelling units, households or housing units that are allowed per unit of land according to the zoning ordinance.
26. **DEVELOPABLE LAND** - The area of the entire tract to be developed less that classified as “Very Poorly Drained,” “Poorly Drained,” or having slopes exceeding 25% in the Strafford County Soils Survey (March 1973, as amended and as further delineated by qualified personnel after on-site inspection).
27. **DWELLING - (Revision 3/11/09)**
- (a) **Attached Dwelling** - A building containing two (2) or more dwelling units, each unit having direct access to the ground outside, and arranged such that units are separated on one (1) or more sides by vertical party walls, and such that no unit is located over another.
 - (b) **Congregate Dwelling** - A multifamily dwelling for the elderly, developed and maintained in compliance with RSA 354-A:15, Housing for Older Persons, in which common dining facilities and certain personal services such as housekeeping, laundry, medical, or nursing services, are provided to residents.
 - (c) **Multifamily Dwelling** - A building containing three (3) or more dwelling units, and wherein units may be located on more than one (1) floor. *Adopted March 11, 2009*
 - (d) **Multifamily Dwelling for the Elderly** - A multifamily dwelling that is developed and maintained in compliance with RSA 354-A:15, Housing for Older Persons.
 - (e) **Single-family Detached Dwelling** - A building, other than a manufactured home designed or intended as a residence exclusively for one (1) family, and separated from any other building, except accessory buildings, by side and rear yards.
 - (f) **Two-family Dwelling** - A detached building, or a pair of attached dwelling units, designed or intended for residential use for exclusive occupancy by two (2) families.
 - (g) **Seasonal Dwelling** - A residence which is occupied five months or less during the year.
28. **DWELLING UNIT** - Any room or suite of rooms forming a habitable unit for one (1) family, with its own cooking and food storage equipment, its own bathing and toilet facilities, and its own living, sleeping and eating areas wholly within such room or suite of rooms.

- 29. EASEMENT, CONSERVATION** - The grant of a property right stipulating that the described land will remain in its natural state and generally precluding future or additional development. This definition includes appropriate references from NHRSA 79-B: 2 and NH RSA as amended. (Revised 3/11/09)
- 30. EATING AND DRINKING PLACES** - Retail establishments selling food and drink for consumption on premises, including restaurants, lounges, private clubs, lunch counters, and refreshment stands selling prepared foods and drinks for immediate on-site consumption.
- 31. EQUIPMENT SERVICE CENTER** - An establishment where equipment and machinery is received, serviced, repaired, overhauled, or rebuilt, and then shipped back to the owner or is resold. Where this may usually apply to production and manufacturing equipment, it could apply to most any kind of equipment except that which is defined under the term of "Retail Sales & Service".
- 32. EXCAVATION** - The extraction of minerals including solids, such as coal and ores, liquids, such as crude petroleum and gases, such as natural gases. The term also includes quarrying, well operation, milling, such as rock crushing, loam screening, washing and flotation, and other preparations customarily done at the mine site or as part of a mining activity and generally activities included in NH RSA 155-E: 1.
- 33. FLOOD IN/FLOOPLAD HAZARD AREA** - Any land susceptible to being inundated with water from any source. (Refer to the Flood Insurance Rate Map of the Town of Milton and the Milton Flood plain Development Ordinance.) See also the definition of Wetlands.
- 34. FOUNDATION** - A permanent structure, normally consisting of poured concrete, cinder blocks, stone or the like, that is placed in the ground for the purpose of providing full support for a building and is constructed in accordance with the required building code and best building practices as reviewed by the Town's Code Enforcement Officer under R 106.2 (International Residential Code, 2006 as revised).
- 35. FRONTAGE** - That side of a lot abutting a street which provides a legal and useable access and which is not a limited access state highway. Lot frontage shall be a continuous line between abutting side lot lines measured along the edge of the street right-of-way.
- 36. HEALTH CARE HOME** - Rest home, nursing home, sheltered or shared care home.
- 37. HOME OCCUPATION** - Any activity carried out for gain by a resident and conducted as an incidental and accessory use in the resident's dwelling unit, including but limited to a professional, tradesman, artist or service provider. The activity shall not change the character of the neighborhood.
- 38. HOMEOWNER ASSOCIATION** - A community association, other than a condominium association that is organized in a development in which individual owners share common interests and responsibilities for the costs and maintenance of interior roads, open facilities, water and sewer facilities and other like facilities.
- 39. HOTEL, MOTEL or INN** - A type of lodging facility that is a commercial establishment containing rooming units for transient lodging which routinely provides additional services such as restaurants, meeting rooms and recreational facilities serving both guests and lodgers as well as the general public.

40. **IMPERVIOUS SURFACE** - Any material that prevents the absorption of stormwater into the ground.
41. **INDUSTRIAL** - Areas for scientific research, development and training, offices, manufacture and assembly of products and related supply activities.
42. **JUNKYARD** - Junkyard or "automotive recycling yard" means 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, and includes garbage dumps and sanitary fills. The work does not include any motor vehicle dealers registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126.
43. **KENNEL** - Any structure or premises, in which animals are kept, boarded, bred or trained for commercial gain.
44. **LODGING HOUSE** - A building where non-transient guests shall not exceed ten.
45. **LOT** - The whole area of a single parcel of land with ascertainable boundaries in single or joint ownership, undivided by a street, established by deed(s) of record, or a segment of land ownership defined by lot boundary lines on a land subdivision plan duly approved and recorded at the Strafford County Register of Deeds.
46. **LOT COVERAGE** - The area of a lot covered by the aggregate of the maximum horizontal cross section area of all buildings on a lot exclusive of cornices, eaves, gutters, chimneys, bay windows, balconies and terraces.
47. **LOT DEPTH** - The mean horizontal distance between a front lot line and a rear lot line.
48. **LOT LINE, FRONT** - A line dividing a lot from a street from which access is legal and useable and which is not a limited access highway. Lot frontage shall be a continuous line between the abutting side lots lines measured along the edge of the street right-of-way.
49. **LOT LINE, REAR** - Except for triangular lots, corner lots, and such other lots which have no rear lot lines, the lot line opposite the front lot line.
50. **LOT LINE, SIDE** - Any lot line not a front or rear lot line.
51. **LOT WIDTH** - The horizontal distance between the side lot lines as measured at the minimum front yard depth required by this Ordinance, and parallel to the street line.
52. **MANMADE VEGTATED BUFFER** – Includes but is not limited to those shrubs, trees and/or ground covers planted to create, replace, or augment, any or all of those qualities of any "naturally vegetated buffer" as used and defined by this ordinance.
53. **MANUFACTURED HOUSING** - Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required

utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined in this section shall not include presite built housing as defined in RSA 674:31-a (Source: NH RSA 674:31) *Adopted March 2009*

54. **MANUFACTURED HOUSING PARK** - Any tract of land on which two or more manufactured housing units are parked or placed and are occupied for living purposes, whether or not a charge is made for such accommodation. The term “Manufactured Housing Park” shall not include sales lots on which unoccupied manufactured housing, whether new or used, are parked for the purpose of inspection or sale.
55. **MANUFACTURING** - Establishments engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products and the blending of materials, such as lubricating oils, plastics and resins among others.
56. **MEDICAL FACILITY** – A facility or establishment that provides health services such as support to medical profession and patients including medical and dental laboratories, blood banks, oxygen and miscellaneous types of medical supplies and services.
57. **NURSING HOME** – A health care facility licensed by the State of New Hampshire wherein skilled nursing care and related medical services are provided on a twenty four (24) hour per day basis to individuals admitted because of illness, disease, or physical or mental infirmity.
58. **OFFICE BUILDING** - A building used primarily for conducting the affairs of a business, profession, service, industry, or government, or like activity, and may include ancillary services for office workers, such as a restaurant, coffee shop, newspaper or candy stand, and child-care facilities.
59. **OPEN SPACE, COMMON** –Land within or related to a development, not individually owned or dedicated for public use, that is designed and intended for the common use of enjoyment of the residents and their guest of the development and may include such complementary structures and improvement as are necessary and appropriate.
60. **OPEN SPACE DEVELOPMENT (OSD)** – An alternative form of residential development where, instead of subdividing an entire tract into lots of conventional size, a similar number of housing units is arranged on lots of reduced dimensions, with the remaining area of the parcel permanently protected as designated open space.
61. **ORDINARY HIGH WATER MARK** - The line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernible, the ordinary high water mark may be determined by the Department of Environmental Services. Reference line shall mean for natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by the Division of Water Resources of the Department.
62. **OUTDOOR RECREATION** - Leisure time activities usually performed with others, often requiring equipment and taking place at prescribed places, sites or fields.

63. **PASSIVE OPEN SPACE** -Areas which, due to the presence of a particular natural or environmental setting, which may include conservation lands, can provide for both active and passive types of resource-based outdoor recreation activities that are less formalized or program-oriented than activity-based recreation. Resource-based outdoor recreation means and refers to activities requiring a natural condition that cannot easily be duplicated by man.
64. **PLANNING BOARD** - The Milton Planning Board established by the Town of Milton under the provisions of NH RSA 673:2.
65. **PROFESSIONAL ESTABLISHMENT** - An office for an accountant, architect, attorney, chiropractor, engineer, dentist, medical doctor or any other similar profession.
66. **PUBLIC ACCOMMODATIONS** - A building or group of buildings which contain four or more living units and which primarily constitute the temporary abode on a commercial basis. Public accommodations shall be deemed to include any establishment, which provides residential living accommodations and meals for transients on a short-term basis, such as a hotel/motel.
67. **RETAIL** - Establishment engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sales of such goods.
68. **RETAIL SALES & SERVICE** - An establishment engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.
69. **ROOMING HOUSE** - A detached dwelling unit that contains sleeping accommodations for individuals other than members of the resident family and having common and dining facilities.
70. **SALE, RENTAL OF CONSTRUCTION EQUIPMENT** – A retail facility that sells or rents backhoes, forklifts, excavating equipment and similar construction type equipment
71. **SALE RENTAL OF RECREATIONAL EQUIPMENT** – A retail facility that sells or rents boats, boy a trailers, recreational trailers, and motor vehicles not designed to be registered or inspected for road use including snowmobiles, all terrain vehicles, racing cars, and other similar vehicles.
72. **SETBACK** - The distance between any property line and the nearest point to which any building or structure can be erected. Measurement shall be to the outer most vertical plane nearest the property line.
73. **SHOPPING MALL/CENTER** - A group of commercial establishments planned, constructed and managed as a total entity, with customer and employee parking provided on-site, provision for the delivery of goods separated from customer access, aesthetic considerations and protection from the elements, and landscaping and signage in accordance with an approved plan.
74. **SIGN** - Any name, identification, description, display, illustration or devise which is affixed to or represented directly or indirectly upon a building, structure or land in view of the general public and which directs attention to product, place, activity, person, institution or business.

- 75. SLOPE** - The ratio of elevation change to horizontal distance, expressed as a percentage. Slope is computed by dividing the vertical distance by the horizontal distance and multiplying the ratio by one hundred.
- 76. SPECIAL EXCEPTION** - A use of land or buildings that is permitted, upon a favorable finding by the Zoning Board of Adjustment, subject to specific conditions that are set forth in the Milton Zoning Ordinance.
- 77. STREET** - A public right-of-way, primarily used or intended to be used for passage or travel by motor vehicles, also used for pedestrian movement and the distribution of utility services, and from which access can be legally obtained to serve lots which are adjacent to said public right-of-way. Streets include those existing rights-of-way laid out or accepted by the Town of Milton, or by the State of New Hampshire within the corporate limits of the Town, but not those rights-of-way laid out as limited access highways.
- 78. STRUCTURE** – A combination of materials constructed or erected which requires location on or in the ground, or attached to something having location on or in the ground, including, but not limited to underground tanks, signs, billboards, towers, framework, platforms, swimming pools and the like.
- 79. SUBDIVISION** - The division of a lot, tract, or parcel of land into two (2) or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance or building development. It includes resubdivision and, when appropriate to the context, relates to process of subdividing or to the land or territory subdivided. The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision under these Regulations. The grant of an easement in gross to a public utility for the purpose of placing and maintaining overhead and underground facilities necessary for its transmission or distribution network such as poles, wires, cable, conduit, manholes, repeaters and supporting apparatus, including any unstaffed structure which is less than 500 square feet, shall not be considered a subdivision, and shall not be deemed to create any new division of land for any other purpose. The rent, lease, development, or grant of an easement to a person for the purpose of planning and maintaining a wireless communication facility shall not be construed as a subdivision, and shall not be deemed to create any new division of land for any other purpose.
- 80. THEATER** - A structure or part of a structure devoted to dramatic, musical or live performance or showing motion pictures.
- 81. TRACT** - An area, parcel, site, piece of land or property, which is the subject of a development proposal and application.
- 82. TRANSPORTATION CENTER** – A facility or establishment that includes a building or structure and offers services for those individuals or business using busses, trucks, rail and related transportation activities.
- 83. UPLAND SOILS** -Soils not present in any wetland area
- 84. VARIANCE** - A variation from the requirements of this ordinance, not otherwise permitted within a particular district and allowable only after a public hearing and determination by the Zoning Board of Adjustment, pursuant to the State Statutes which govern its discretionary power.

- 85. WAREHOUSING & STORAGE** - A building used primarily for the holding or storage of goods and merchandise. For the purpose of this ordinance, where a warehousing establishment is permitted, a mini-warehouse establishment shall also be permitted.
- 86. WETLANDS** - A wetland is hereby determined to be an area which would be delineated as a wetland using the methodology required by the state of New Hampshire Wetlands Bureau. The Department of Environmental Service Wetlands Bureau requires wetlands to be delineated using a combination of the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, Environmental Laboratory, Department of the Army, 1987 and the Field Indicators for Identifying Hydric Soils in New England, Version 2, New England Interstate Water Pollution Control Commission, 1998. The approved wetlands delineation methodology uses three parameters, hydric soils, hydrophytic vegetation, and wetland hydrology. The precise location of a wetland boundary in any particular case shall be determined by on-site inspection of soil types and vegetation by a certified wetland scientist using the methodology required by the New Hampshire Department of Environmental Service Wetlands Bureau. In conformance with State RSA 482-A:2,X - Wetlands' means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated solid conditions.
- 87. WHOLESALE SALES**- The sale of goods, merchandise and commodities in gross, primarily for the purpose of resale.
- 88. YARD** -An open space on the same lot with a main building unoccupied and unobstructed by any structure or portion of a structure provided that fences, walls, poles, post and other customary yard accessories, ornaments, and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility.
- 89. YARD, FRONT** - A space between a street line and a line parallel thereto extending between side lot lines drawn through the nearest point of a structure.
- 90. YARD, REAR**- A yard extending between side lot lines across the rear of the lot.
- 91. YARD, SIDE**- A yard extending from the front yard, or front lot line where there is not front yard, to the rear yard

**ARTICLE III
ESTABLISHMENT OF ZONING DISTRICTS
(Revised & Adopted 3/10/15)**

Section 3.1 General

Every parcel of land and any buildings or structures in the Town of Milton are subject to the restrictions of a base district, as established hereinafter, and may be subject to the provisions of one or more overlay districts, as established hereinafter. Land, buildings, or structures shall be used only if and to the extent that a proposed use is permitted both in the base district and any applicable overlay district. Wherever the regulations differ between the base and overlay Districts, the regulations that impose the more restrictive provisions or the higher standards shall control.

Section 3.2 Zoning Districts Established

a. All of the land in the Town of Milton is hereby divided into the following base zoning districts, as identified, herein with district zoning boundaries delineated on the Official Zoning Map and noted in the written text which is a part of the Official Zoning Map. The overlay districts are superimposed upon the base districts and the provision of each overlay district shall be in addition to the requirements of the base district.

<i>Abbreviation</i>	<i>Base District</i>
HDR	High Density Residential Zone
IC	Industrial / Commercial Zone
CR	Commercial Residential Zone
LDR	Low Density Residential
	<i>Overlay Districts</i>
CS	Conservation Subdivision (to be replaced by OSD)
GUR	Groundwater Use Restriction
WC	Wetland Conservation Ordinance
GP	Groundwater Protection Overlay District
SP	Shoreland Protection Overlay District

b. The base districts are established for the purposes stated below:

- 1) The High Density Residential (HDR) Zone is established to accommodate single family housing, apartments and dwelling with two units with a minimum lot size of 0.5 acre and served by municipal water and sewer. Developed lots shall be connected to the Milton Water District system and Milton Sewer District system if available. (*Note:* In order to receive the benefits of the High Density Residential (HDR) zoning district, the parcel shall be served by municipal water and sewer).
- 2) The Industrial / Commercial (IC) Zone is established to accommodate commercial, retail and manufacturing uses with a minimum lot size of two acres and served by municipal sewer and water if within 100 feet of the lot. When lots are within 100 feet of the Milton Water District system and Milton Sewer District system, the owner is required to connect to the system(s).

- 3) The Commercial / Residential (CR) Zone is established to accommodate a mixed use of residential uses, professional establishments and retail uses with a minimum lot size of one acre and served by municipal sewer and water where available. All lots and developments shall be connected to the Milton Water District system and Milton Sewer District system, when service is available.
- 4) The Low Density Residential (LDR) Zone comprises the largest land area in Milton, approximately 90% of the land area, and is established to accommodate residential, agricultural, recreational and rural type land uses in a low density environment with a minimum lot size of two acres.

Section 3.3 The Zoning Map

The Zoning Map shall consist of a set of maps including the Official Zoning Map, Town of Milton, NH dated March 2004 prepared by the Stafford Regional Planning Commission and certain overlay zoning maps, the original of which shall be kept in the office of the Town Clerk and in the office of the Milton Planning Board.

- a) The Official Zoning Map shall display the boundaries of the base districts as identified in Section 3.2 a.
- b) The zoning overlay zoning district maps are a series of topical maps displaying those overlay districts.
- c) Amendments to the Zoning Map shall be made in accordance with Article I section G of the Milton Zoning Ordinance.
- d) The location of district boundaries shall be as shown on the Official Zoning Maps or as otherwise described in this ordinance. Where any uncertainty exists with respect to the boundary of any District as shown on the Zoning Base District or Overlay District Maps, the following rules shall apply:
 - (1) Where a boundary is indicated as a highway, street, alley, railroad, utility right-of way, watercourse or Town boundary, it shall be construed to be the centerline thereof or such Town boundary;
 - (2) Where a boundary is indicated as approximately parallel to a highway, street, alley, railroad, utility right-of-way, watercourse or Town boundary, it shall be construed as parallel thereto at such distance from the edge of the right-of-way thereof as shown on the Zoning Maps;
 - (3) Where a boundary coincides within ten (10) feet or less with a lot line, the boundary shall be construed to be the lot line; and
 - (4) If no dimension is given on the Zoning Maps, the location of any boundary shall be determined by the Code Enforcement Officer by use of the graphic scale shown on the Zoning Maps.
- e) When a lot is transected by a zoning district boundary, the regulations of this Zoning Ordinance applicable to the larger part by area of such lot may, at the option of the owner, be deemed to govern

the smaller part of the lot beyond such district boundary but only to an extent not more than forty (40) linear feet in depth beyond such district boundary.

f) Where a lot is situated in part in the Town of Milton and in part in an adjacent municipality, the entire lot shall be considered as if it were situated within the applicable zoning district in the Town of Milton.

Section 3.4 Allowable Principal and Accessory Uses in Zoning Districts.

a) A use denoted by the letter "P" within a zoning district, as set forth in Section 3.5 Table of Principal Uses is a use permitted by right in that district, subject to all other applicable sections of this ordinance and other local, state, and federal laws, rules and regulations.

b) A use denoted by the letters "SE" within a zoning district, as set forth in Section 3.5 Table of Principal Uses is a use which may be authorized by special exception in that district, subject to all other conditions of approval as specified in this ordinance. The Board of Adjustment may grant special exceptions in accordance with the procedures and conditions set forth in Article XI, subject to all other applicable sections of this ordinance and other local, state, and federal laws, rules and regulations.

c) A use denoted by the letters "CU" within a zoning district, as set forth in Section 3.5 Table of Principal Uses is a use which may be authorized by a conditional use permit in that district, subject to all other conditions of approval for such as specified in this ordinance. The Planning Board may grant a conditional use permit in accordance with the procedures and conditions, subject to all other applicable sections of this ordinance and other local, state, and federal laws, rules and regulations.

d) A use denoted by a dashed line (--) within a zoning district, as set forth in Section 3.5 Table of Principal Uses is a use which is not permitted in that district.

Section 3.5 Table of Principal and Accessory Uses in Zoning Districts.

In the base districts established under Section 3.2, Zoning Districts Established, of this ordinance, no building, structure, or land shall be used or occupied except as set forth hereinafter in the Table of Principal Uses, subject to all other provisions and standards of this ordinance, and other local, state and federal laws, rules and regulations. The Table of Principal Uses is organized according to a functional and economic classification of land uses, as follows:

- A. Residential
- B. Educational and Institutional
- C. Services
- D. Retail Trade
- E. Motor Vehicle Sales and Service
- F. Transportation, Communications, and Utilities
- G. Manufacturing and Construction
- H. Agricultural

Table of Principal Uses

Principal Uses		Base Zoning Districts			
Use #	Use Category	HDR	IC	CR	LDR
A	Residential				
1	Dwelling, One Unit	P	---	P	P
	Dwelling, Two Unit	P	---	P	P
	Dwelling, Multifamily	P	---	P	---
	Accessory Structure	P	---	P	P
	Home Occupation	P	---	P	P
	Manufactured housing park	---	---	---	SE
	Manufactured housing subdivision	---	---	---	SE
	Open Space Development (OSD)	---	---	P	P
	Rooming house	SE	---	SE	---
B	Educational and Institutional				
1	Elem and Secondary Schools	SE	SE	SE	SE
	Post secondary, colleges	SE	SE	SE	SE
	Child (day) care facility	SE	P	P	SE
	Adult day care	SE	P	P	SE
	Social service center	P	---	P	---
	Community center	P	---	P	---
	Church	P	P	P	SE
	Private social clubs	SE	SE	SE	---
	Accessory Structure	P	P	P	P
C	Services				
	Recreational facility	P	SE	---	SE
	Outdoor Recreation	---	---	---	SE
	Concert halls, studios	---	P	P	---
	Campgrounds, youth camps	---	---	---	SE
	Medical facility	P	P	SE	---
	Nursing homes	P	---	P	
	Assisted living facility	P	---	P	---
	Business, professional offices	---	P	P	---
	Professional Establishment	---	P	P	---
	Hotels, motels, Inns	---	P	P	---
	Bed and Breakfast	SE	---	P	SE
	Kennel	---	---	SE	SE
	Accessory Structure	P	P	P	P
D	Retail Trade				
	Food & Drink Service	---	P	P	---
	Restaurant, drive thorough	---	P	P	---
	Restaurant, sit down	P	P	P	---
		HDR	IC	CR	LDR
	Equipment Service Center	---	P	SE	---
	Retail Sales & Service	---	P	SE	---

	Shopping Mall / Center	---	SE	SE	---
	Theater	---	P	P	---
	Accessory Structure	P	P	P	P
E	Motor Vehicle Sales, Service				
	Auto Sales & Service	---	SE	SE	---
	Sale, rental of recreation equipment	---	SE	SE	---
	Sale, rental of construction equipment	---	SE	SE	---
	Accessory Structure	---	P	P	P
F	Transportation, Com & Utilities				
	Aircraft, TOL as accessory	---	---	---	SE
	Transportation Center (formerly Truck or rail terminal)	---	SE	---	---
	Wireless Service Facility	SE	SE	SE	SE
	Public utilities and related	SE	SE	SE	SE
	Radio / TV Station or Transmitter	---	SE	---	---
	Accessory Structure	P	P	P	P
G	Manufacturing & Construction				
	Manufacturing fabrication, of Goods	---	P	---	---
	Materials recycling, processing	---	P	---	---
	Printing and publishing	---	P	SE	---
	Warehousing & Storage	---	P	SE	---
	Wholesale Sales	---	P	SE	---
	Accessory Structure	---	P	P	---
H	Agricultural				
	Agribusiness	---	SE	P	P
	Accessory Structure	---	P	P	P

Notes:

1. Septic systems shall be at least 75 feet from a stream, brook, lake, river or pond, except that in the Shoreland Overlay District, where Article XVII H 3 is effective.
2. Only one (1) residential structure, with an accessory structure, is allowed on a lot.
3. In HDR, no more than four (4) apartments or dwelling units permitted on a lot of 21,780 SF with an additional 5,445 SF required for each unit over four.
4. Adequate off-street parking shall be provided for all apartment dwellings and non-residential uses.
5. Conversion of a seasonal dwelling to year-round use requires a building permit and connection to municipal sewer service or proof of the adequacy of the septic system.

Table of Dimensional Requirements

Zoning District	Front Setback	Rear Setback	Side Setback	Maximum Height	Minimum Frontage	Minimum Lot Size
HDR	10 feet	10 feet	15 feet	35 feet ¹	75 feet	0.5 acre
IC	25 feet	30 feet	30 feet	35 feet	200 feet ²	2.0 acres
CR	25 feet	25 feet	25 feet	35 feet ³	150 feet	1.0 acre
LDR	40 feet	30 feet	25 feet	35 feet ⁴	200 feet	2.0 acres

¹ Excludes silos, steeples and similar structures.

² Or 150 feet on a cul du sac on an interior road.

³ See 1 above.

ARTICLE IV
PERSONAL WIRELESS SERVICE FACILITIES
(Revised 3/11/09)

Personal Wireless Service Facilities will be permitted, by Special Exception, in Industrial Zones, Water District/High Density Residential Zones, Low Density Residential Zones, and Commercial Residential Zones and require a site plan review. No Personal Wireless Service Facility is permitted on land under Conservation Easement. Any plan to install wireless facilities for the commercial transmission or reception of tele-communications shall be subject to the specific requirements detailed herein and elsewhere in the Zoning Ordinance and Site Plan Review Regulations. Personal Wireless Service Facilities shall not be considered accessory uses. All Personal Wireless Service Facilities shall conform to the following minimum requirements.

A. DEFINITIONS

1. **ABANDONED** - An antenna and structure no longer being used to receive or send transmissions for thirty (30) days.
 2. **ALTERNATIVE TOWER STRUCTURE** (or "stealth facility") - A wireless communications facility designed to blend into the environment so as to be visually unobtrusive. Examples include screened roof-mounted antennas; building-mounted antennas painted to match the existing structure; antennas integrated into architectural elements such as clock towers and church steeples; antenna structures resembling utility poles; and antennas placed on trees.
 3. **ANTENNA** - The surface from which radio signals are sent and /or received by a personal wireless service facility.
 4. **ANTENNA ARRAY**-A collection of antennas attached to a mount to send and receive radio signals.
 5. **ANTENNA SUPPORT STRUCTURE** - A building, pole, telescoping mast, tower, or other such structure which supports an antenna.
 6. **AVERAGE TREE CANOPY**-An average elevation of the upper canopy above ground level for a defined area equal to 2 times the height of the facility. The trees within the proposed security barrier shall be excluded. All trees over 25 feet in height shall be inventoried.
 7. **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.
 8. **CARRIER**-A Company that provides personal wireless services also sometimes referred to as a provider.
 9. **CO-LOCATION** -The use of a single mount on the ground by more than one carrier (vertical and horizontal co-location) or the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.
 10. **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.
 11. **FACILITY** - See Personal Wireless Service Facility.
 12. **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.
-

13. **HEIGHT** - The height above ground level (AGL) from the natural grade of a site to the highest point of a structure.
14. **PERSONAL WIRELESS SERVICE FACILITY** - Facility for the provisions 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.
15. **PERSONAL WIRELESS SERVICES** - The three types of services regulated by this Ordinance: commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchanges access services as described in the Telecommunications Act of 1996 as amended.
16. **SECURITY BARRIER** - A wall, fence, or berm that restricts an area from unauthorized entry or trespass.
17. **SEPARATION** - The distance between one carrier's array of antennas and another carrier's array.

B. REGULATION AND PERFORMANCE CRITERIA - In considering any request for special exception for the placement of a communication tower, the Zoning Board of Adjustment shall determine that all of the criteria in this section are met.

1. **Tower Locations:** All Personal Wireless Service Facilities must be located 100-Feet from all lot lines.
2. **Location Requirements:** The Zoning Board of Adjustments must be satisfied that a complete assessment of locations, in order of priority, has been under-taken and completed, and that higher priority uses are exhausted or unfeasible.
3. **Maximum Height:** Ground-mounted personal wireless service facilities shall not project higher than (10) ten feet above the average tree canopy height within a one hundred and fifty (150) foot perimeter of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest.

C. INTERFERENCE WITH PUBLIC SAFETY TELECOMMUNICATIONS - No new or existing telecommunications service shall interfere with public safety telecommunications. All applications for new service shall be accompanied by an inter-modulation study, which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Telecommunication providers shall notify the Police and Fire Departments at least ten (10) calendar days prior to placing new services on line, to give those Departments an opportunity to monitor interference levels during the testing process. A copy of the notification should be sent to the Planning Board for their records.

D. DECLARATION OF CONTINUING OPERATION - The owner(s) of a wireless facility, with written authorization from the property owner, shall file annually a declaration with the Planning Board as to the continuing operation of every facility installed, subject to these regulations. Failure to do so may be construed to mean that the facility is no longer in use and considered abandoned, thus subject to the provisions below.

E. ABANDONED OR UNUSED WIRELESS COMMUNICATION FACILITIES - Abandoned or unused antennas and structures shall be removed as follows:

1. An agreement between the facility owner (and successors in interest), property owner (and successors in interest), and the Town of Milton shall be submitted with the Wireless Communications Facilities original application.
2. A copy of the relevant portions of a signed lease (except in cases where the land is owned by the provider) which requires the applicant to remove the antenna, support structure, and associated facilities upon cessation of operations at the site, shall be submitted at the time of the application.
3. All abandoned wireless communication facilities shall be removed within ninety (90) days of the cessation of operations at the site, unless a time extension is approved by the Planning Board.
4. The amount of the security shall be based upon the estimated removal cost plus, fifteen percent (15%), provided by the applicant and certified by a professional civil engineer licensed in New Hampshire. The owner of the facility shall provide the Planning board with a revised removal cost estimate and structural evaluation prepared by a 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.

If the owner of the facility does not remove the facility upon the Zoning Administrator's order, then the Selectman 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 Selectmen. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.

ARTICLE V
MANUFACTURED HOUSING PARKS

Manufactured Housing Parks will be permitted in the Low Density Residential Zone and will require subdivision and if applicable, site plan review. All Manufactured Housing parks shall conform to the following minimum requirements:

- A. LOCATION** - All Manufactured Housing Parks shall have on-site sewage disposal and a group well(s), unless municipal water and sewer are available. All such parks shall also be located on a site graded to insure adequate drainage of surface and sub-surface water.
- B. BUFFER YARD** - There shall be not less than 50 feet plus a visual screen between an exterior lot line of the park and any mobile home space or other structure or parking area within the park. Where the buffer area is not naturally wooded, an appropriate wall, fence or hedge shall be provided as necessary to screen the park from view at all exterior lot lines.
- C. AREA** - The area of the park shall be large enough to accommodate:
 - 1. Manufactured Home lot spaces shall be a minimum of 21,870 square feet (1/2 acre). “Poorly” or “Very Poorly Drained” soils shall be excluded from the density calculation.
 - 2. Necessary streets, walkways, public utilities, parking areas for motor vehicles and service buildings to house necessary facilities as are prescribed by the Town of Milton Road Standards.
- D. PARKING SPACE** - Vehicle parking spaces shall be provided in sufficient number to meet the needs of the occupants of the park and their guests without interference with the normal movement of traffic. Such facilities shall be provided at the rate of at least two vehicle spaces for each Manufactured Home space.
- E. ADMINISTRATIVE AND/OR SERVICE BUILDINGS** - The administrative and/or service building shall be located on a space, which remains as an integral part of the Manufactured Housing Park. For dimensional control purposes, however, it/they shall be treated as a building lot subject to the requirements of the zoning district in which it is located.
- F. SANITATION** - Manufactured Housing Parks shall meet all requirements relevant to sanitation as required by the Water Supply and Pollution Control Commission and Bureau of Environmental Health, Department of Health and Welfare, State of New Hampshire.
- G. SETBACK**- The setbacks shall be 30-feet from the Ordinary High Water Mark for any property having shore land frontage.

ARTICLE VI
OPEN SPACE DEVELOPMENTS
(Adopted 3/9/10)

1. Authority

This Section is enacted in accordance with the provisions of NH RSA 674:21 (Innovative Land Use Controls) and NH RSA 674: 16-20. This authority allows the Planning Board to grant conditional use permits, special use permits and waivers from specific requirements of this Article.

2. Purpose

The purpose of this Open Space Development Section is to:

- Further the recommendations of the Milton Master Plan by encouraging flexibility in the design and development of land to preserve open space and traditional rural character;
- Retain and protect important natural, scenic and historic resources;
- Provide for more efficient use of land and town services and
- Promote the development of balanced residential communities in harmony with the natural landscape.

3. Objectives

Open Space Development (OSD) will promote the following objectives:

- a. Maintain rural character through preservation farmland, forests and rural viewsapes and encouraging residential development that is sited in harmony with the environment and promotes a sense of neighborhood.
- b. Preserve those areas of the site that have high environmental or ecological value such as wildlife habitat (as identified in the Milton Master Plan and areas of high quality habitat as based on NH Fish and Game’s Wildlife Action Plan) and significant water resource value such as critical watersheds, wetlands, streams and rivers.
- c. Provide for alternative housing opportunities.
- d. Minimize impact of development sprawl by reducing potential for consecutive lot development on major roadways.
- e. Locate buildings and structures on those portions of the site that are the most appropriate for development and avoid areas that have hydric soil conditions are subject to flooding and have steep slopes.
- f. Preserve historic, archeological, and cultural features located on the site.
- g. Create a permanently protected contiguous network of open spaces or “greenways” by linking the common open spaces within the open space subdivision and to open space on adjoining lands wherever possible.

- h. Reduce the amount of roads, sidewalks, and stormwater management structures that must be built and maintained.
- i. Preserve undeveloped frontage along existing roads, protecting transportation corridors from encroachment of structures.

4. Definitions

For purposes of this Article, the following terms are defined as follows:

- a. **Applicant:** The owner of land proposed to be subdivided or his representative.
- b. **Buffer:** Land area within which adequate vegetation is maintained or provided to visibly separate or screen one use from another and/or to minimize potentially negative impacts on surrounding areas.
- c. **Common Area:** Land within or related to a development, exclusive of land dedicated as designated open space, not individually owned, 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.
- d. **Conservation 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 and runs with the land in perpetuity.
- e. **Designated Open Space:** Reserved land that is permanently protected from further development and remains in a natural condition or is managed according to an approved management plan for natural resource functions, e.g., forestry, agriculture, habitat protection, passive recreation, or limited uses as approved by the Planning Board under this ordinance as part of an open space subdivision.
- f. **Homeowners Association:** A private corporation, association, or other legal entity organized in accordance with state law and established by the applicant or the member individuals for the benefit and enjoyment of its members, including oversight and management of common open space, designated open space, and/or shared facilities.
- g. **Open Space Development subdivision:** An alternative form of residential development where, instead of subdividing an entire tract into lots of conventional size, a similar number of housing units are arranged on lots of reduced dimensions, with the remaining area of the parcel permanently protected as designated open space.
- h. **Parent Parcel:** Any lot existing as of March 9, 2010, the date of the adoption of this ordinance.

5. Applicability

- a. In furtherance of the goals of the Milton Master Plan, any subdivision for residential use that is proposed on a parent parcel within the Agricultural and Residential Zoning Districts of 20 or more acres may be considered for the OSD Option.

Authorization to Issue a Conditional Use Permit:

Notwithstanding other provisions of Milton's zoning ordinance, authority is hereby granted to the Planning Board, as allowed under RSA 674:21, II, to issue a Conditional Use Permit to modify the requirements of this section as follows:

- 1) Such modifications shall be consistent with the purposes and objectives of this section;
 - 2) All lots comply with the NH Department of Environmental Services for subsurface wastewater management;
 - 3) Fall within the standards contained herein, and
 - 4) Shall not be detrimental to public health, safety or welfare.
- b. **Sequential Subdivisions:** The provisions of this ordinance shall apply to the sequenced development of a parent parcel over time through separate successive applications. When a subdivision is proposed that involves part of a larger parcel or includes lots that are capable of further subdivision, the Planning Board may require that a site inventory and a conceptual (non-binding) long-range plan be submitted for the entire parcel and used to evaluate the proposed subdivision.
- c. **Review Process:** A subdivision application under this section shall comply with the application and review process specified in the Town of Milton's Subdivision Regulations. If there are any conflicts, the provisions of this article shall apply.
- d. **Legal Review:** Prior to final approval by the planning board, the applicant shall submit for review by the town counsel any deeds, restrictive covenants, condominium or cooperative agreements, conservation easement, deed restrictions, legal documents related to the Homeowners Association or other legal agreements proposed for use in the open space subdivision. The town counsel shall advise the Planning Board of the adequacy of such legal provisions. The applicant shall pay all associated costs of the legal review in accordance with NH RSA 676:4 I (g).

6. Permitted Uses

Land within an OSD subdivision may be used for the following purposes:

- a. Single family and duplex residential dwellings, accessory uses and buildings, and minor home occupations as permitted in the zoning district in which the parcel lies.
- b. Uses permitted within the Designated Open Space as described in Section 10 of this Article.
- c. Manufactured housing, accessory recreation facilities (community building, clubhouse, swimming pool, etc), accessory utility and facility maintenance.

7. Development Density

The total number of dwelling units allowed in an OSD Subdivision shall not exceed the number of dwellings that would be allowed under a conventional subdivision for the zoning district in which the site is located. In no case shall the density exceed the soils carrying capacity to

accommodate a septic system for each dwelling unit as required by the NH DES consistent with RSA 485A:38.

The allowable number of units will be determined upon submission by the applicant of a yield plan. A yield plan is a sketch plan for a conventional subdivision for the subject property; the Planning Board could approve such plan as a conventional subdivision as it complies with all requirements of the Town’s Subdivision Regulations.

8. Procedural Requirements

An OSD subdivision application under this section shall comply with the application and review process specified in the Subdivision Regulations, except that sections of the Subdivision Regulations that are clearly not applicable to an open space subdivision design shall not be imposed on the applicant by the Planning Board.

9. Lot and Dimensional Requirements

- a. Open Space Developments are subject to the following lot, dimensional and building separation requirements.

Dimension	Residential & Agricultural District	
Minimum Lot Area	30,000	
Maximum Lot Area	150% ¹	
Frontage	100 ft	
Front Yard	35 ft	
Side Yard	25 ft	
Rear Yard	25 ft	
Height	35 ft	
Minimum Separation Between Buildings—Existing	50 ft	
Minimum Separation Between Buildings—New Lots	40 ft	

Note:

- 1. Unless otherwise required by NH DES for the OSD minimum lot size.
- b. Alternative Lot Sizing: The Planning Board may authorize variations from the minimum lot sizes specified above by a Conditional Use Permit, provided the Planning Board determines that the following conditions are met:
 - All lots comply with the New Hampshire Department of Environmental Services requirements for subsurface wastewater management (developments may utilize individual or community wells and/or septic systems); and
 - The objectives and design standards of this article and the Subdivision Regulations are otherwise achieved.

- d. Applicants are encouraged to vary lot sizes, lot dimensions, and the location of building envelopes and structures from the access road and from lot to lot within the subdivision to retain significant, natural vegetation along the access road or existing adjacent public road; provide increased privacy for residents on adjacent lots; and increase the visual variety provided by the arrangement of homes within the subdivision.
- e. Lots may be irregular in size and shape provided they conform to the natural topography and features of the parcel (e.g., the lot lines follow an existing stone wall, stream, or other natural dividing feature).
- f. The Planning Board may authorize variations from the above standards, except for any requirement provided by state regulation or mandated elsewhere in this ordinance, by up to 25 percent by a Conditional Use Permit issued pursuant to Section 5 for the purpose of providing flexibility in the design of the subdivision to meet the objectives of this section.
- g. Common driveways providing access to two residential lots shall be allowed.
- h. Landscape Buffer: Depending on the abutting land uses, the Open Space Development may have a buffer of less than 100 feet between abutting land uses and the development and a buffer up to 150 feet but no less than 100 feet between any new structure and an existing public road to retain the community's rural character. The buffer area shall remain free of buildings and whenever possible, the natural vegetation shall remain. The Board may require vegetative plantings to supplement or replace inadequate natural buffers. Only the primary access road may be permitted in the landscape buffer
- i. Design Standards for Developed Areas--Subdivision plans shall comply with any additional applicable standards governing the location and layout of lots and structures found elsewhere in this ordinance and as set forth in the Subdivision Regulations.

10. Permissible Uses of Open Space

- a. The total area of Designated Open Space shall equal at least 50 percent of the Open Space Development's gross tract area. Not more than 50 percent of the Designated Open Space may consist of non-buildable areas, such as wetlands and land with slopes in excess of 25%. Such Designated Open Space shall consist of as much contiguous area as possible and should, when practical, connect with existing trails, conservation easements, parks and playgrounds and other types of open space.
- b. Portions of the parcel that comprise part of an individual house lot, roadway, driveway, access road, roadway right-of-way, other new or existing right-of-way, utility easement, private or community leachfields or other components of a wastewater management system, stormwater management structures, or are part of a required buffer between any new structure and an existing right-of-way shall not count toward the calculation of the Designated Open Space.
- c. The following uses generally are permitted in the Designated Open Space, unless specifically prohibited or restricted as a condition of subdivision approval for the purposes of protecting important natural features or characteristics of the parcel:
 - 1) Forest management activities and agricultural cultivation and pastures provided that all applicable best management practices are employed.

- 2) Passive (non-motorized) trails and recreational uses such as walking, hiking, bird watching, skiing and snow shoeing.
 - 3) Snowmobile trails.
 - 4) Horseback Riding and Cycling.
- d. Up to 50 percent of the Designated Open Space may be considered the Common Area and may be permitted by Conditional Use Permit to be used for the following. The Planning Board may impose specific criteria or restrictions on such uses as deemed necessary to support the goals of this section:
- 1) Agriculture involving animal husbandry and/or boarding.
 - 2) Active outdoor recreation uses, including formal playgrounds and fields.
 - 3) Parking areas for access to the designated open space.
 - 4) Individual or community wells provided that this use was approved as part of the subdivision plan and that appropriate legal arrangements are established and approved by the Planning Board for the maintenance and operation of these facilities.
- e. The removal of soil, trees and other natural features from the designated open space is prohibited, except as consistent with conservation objectives or permitted uses as provided above.
- f. The Designated Open Space shall be retained in a natural, undisturbed state, except for those activities permitted and approved as provided above, or as required for active management according to a conservation agreement and management plan written by a qualified natural resource professional.

11. Protection and Management of Open Space

At the applicant's option and subject to approval by the Planning Board, all areas to be protected as open space shall be:

- a. Conveyed to the town to be placed under the care, custody and control of the Conservation Commission, and be accepted by it for use as a park or open space use. Land conveyed to the town shall be open for public use; and/or
- b. Conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space, with a conservation restriction as specified in §3 below. Such organization shall be acceptable to the town as a bona fide conservation organization; and/or
- c. Conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development (i.e. "homeowners association") and placed under conservation restriction. If such a corporation or trust is used, as indicated herein, ownership thereof shall pass with conveyance of the lots or residential units. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners association is capable of assuming such responsibility. Thereafter, the members of the association shall share the cost of maintaining the open space. The Planning Board shall require the applicant to provide documentation that membership in the homeowners' association is mandatory and such association that has been established prior to the conveyance of any lots within the subdivision.

- d. Design Guidelines for Designated Open Space. The location and layout of the open space shall conform to the standards and process set forth in the Subdivision Regulations.
- e. Monitoring of the Open Space: The applicant should provide sufficient funds to the Town, which shall be placed in a designated escrow account for the purpose of the Town's monitoring of the open space. The Town's Conservation Commission or a non-profit conservation organization would provide this service.

**ARTICLE VII
NON-CONFORMING USES AND LOTS**

Any lawful non-conforming use in existence at the time of passage of this ordinance, or at the time of adoption of an amendment to this ordinance may continue unchanged. Minor expansion shall be allowed if the nature and intent of the use is not changed and the expansion does not adversely affect the surrounding area.

- A.** Non-conforming structures or uses destroyed by fire, natural disaster or other means may be repaired or replaced within one (1) year if the degree of nonconformity is not increased.

- B.** Abandonment of a non-conforming use shall constitute the termination of the right to continue or reestablish the non-conforming use. A non-conforming use shall be considered abandoned if:
 - 1. There is the intention to abandon or relinquish the use, and
 - 2. There is some overt act or failure to act, which carries the implication that the owner neither claims nor retains any interest in the use.

- C. NON-CONFORMING VACANT LOTS** - A non-conforming vacant lot which was duly recorded in the Strafford County Registry of Deeds prior to the adoption of this ordinance, may be used for one unit provided that:
 - 1. The lot is in a district where the proposed use is permitted.
 - 2. The arrangements for sewage disposal are approved by the Building Inspector in accordance with the provisions of state laws.
 - 3. The unit conforms to the current setback requirements for the zone in which the lot is located.
 - 4. Adjacent non-conforming lots under the same ownership may be merged to create a new, larger non-conforming lot, provided that the merger does not create any new nonconformity, other than lot size.

- D. EXISTING LOTS OF RECORD** - A structure may be constructed on any Lot of Record in any zone, even if said lot is less than the minimum area required for building lots in which it is located, providing the following conditions exist or are met:
 - 1. **Availability of Adjacent Vacant Land** - Two adjacent non-conforming lots of record, under identical ownership may be merged even if it results in a new non-conforming lot, provided that the only new nonconformity is in regard to lot dimensions.
 - 2. **Side Yards** - No structure shall be constructed on a non-conforming lot unless it shall have a minimum side yard of ten (10) feet on either side.
 - 3. **Front and Rear Yards** - No structure shall be constructed on a non-conforming lot unless it shall have front and rear yards conforming to the current minimum required for the zone in which said lot is located, or at such front yard setback distance as shall conform to the line of existing buildings on adjacent properties.

(Amended 3/13/12)

Article VIII
ZONING BOARD OF ADJUSTMENT
(Revised 3/11/09)

I. In accordance with the powers granted by RSA 674:33, Powers of the Zoning Board of Adjustment, the Town of Milton Zoning Board of Adjustment (ZBA) shall hold hearings and make decisions on the following:

1. Appeals of decisions of the Code Enforcement Officer;
2. Applications for special exceptions under the terms of this ordinance;
3. Appeals for variances from the terms of this ordinance;
4. Appeals of determinations of the Planning Board which are based on the terms of this ordinance, in accordance with RSA 676:5, Appeals to the Board of Adjustment;
5. Applications for equitable waivers of dimensional requirements pursuant to the provisions of RSA 674:33-a, Equitable Waiver of Dimensional Requirement;

A. Special Exceptions

Special exceptions shall be made in harmony with the general purpose and intent of the Zoning Ordinance. The Zoning Board of Adjustment shall affirmatively find that the following criteria exist in order to approve applications for a Special Exception:

1. That the specific site is an appropriate location for the proposed use or structure.
2. That the use will not be injurious, noxious, offensive or detrimental to the neighborhood.
3. That there will be no undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking.
4. That adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use and structure so that the use will not be contrary to the public health, safety or welfare.
5. That the proposed use or structure is consistent with the spirit of this ordinance and the intent of the Master Plan.

If the use or construction so authorized by the granting of a special exception has not commenced within a two-year period from the date of the decision of the ZBA, or in the event of an appeal to the courts of the special exception or the project to which it relates, within a two-year period from the date of the judgment of the court, then the special exception shall be deemed to have expired and the ZBA's decision rendered null and void. Upon request, submitted prior to the date of expiration, the ZBA may extend the period of validity of a special exception for one (1) additional year provided that the applicant presents evidence of a good faith effort made to commence the use or construction so authorized by special exception, that the delay in commencement was beyond the applicant's control, and that the circumstances relating to the property and the surrounding neighborhood have not changed substantially since the date of the original decision. Once an extension has been granted, should the use or construction so authorized by special exception not be commenced within the one-year extension period, then the special exception shall be deemed to have expired and the ZBA's decision rendered null and void.

If after commencement, a special exception is abandoned or discontinued for a period of two (2) years, or it is supplanted by another use, then the special exception shall be deemed to have expired and cannot be re-established without a new application process and the affirmative decision of the ZBA.

B. The ZBA may grant variances and equitable waivers if a majority of the Board makes a positive finding of fact on each of the following relevant items.

- (1) The variance will not be contrary to the public interest;
- (2) The spirit of the ordinance is observed;
- (3) Substantial justice is done;
- (4) The values of surrounding properties are not diminished; and
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

If the use or construction so authorized by a variance has not commenced within a two-year period from the date of the decision of the ZBA, or in the event of an appeal to the courts of the variance or the project to which it relates, within a two-year period from the date of the judgment of the court, then the variance shall be deemed to have expired and the ZBA's authorization shall be considered null and void. Upon request, submitted prior to the date of expiration, the ZBA may extend the period of validity of a variance for one (1) additional year provided that the applicant presents evidence of a good faith effort made to commence the use or construction so authorized by the variance, that the delay in commencement was beyond the applicant's control, and that the circumstances relating to the property and the surrounding neighborhood have not changed substantially since the date of the original decision. Once an extension has been granted, should the use or construction so authorized by a variance not be commenced within the one (1) year extension period, then the variance shall be deemed to have expired and the ZBA's decision rendered null and void.

If after commencement, a variance is abandoned for a period of two (2) years, or otherwise replaced by a conforming use, and then the variance shall be deemed to have expired and cannot be re-established without a new application process and affirmative decision of the ZBA.

Equitable Waiver of a Dimensional Requirement.

1. The violation was not noticed or discovered until after a structure in violation had been substantially completed, or a lot or other division of land in violation had been conveyed to a bona fide purchaser for value.
2. The violation was caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in the interpretation or administration of this ordinance by the Code Enforcement Officer.
3. The violation does not constitute a nuisance, diminish the value of properties in the area, or adversely affect any present or permissible future uses of the premises.
4. Weighing the cost of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained in requiring the violation to be corrected.
5. In lieu of the findings required by the Board under items # 1 and # 2 above, the owner may demonstrate to the satisfaction of the Board that the violation has existed for ten (10) years or more and no enforcement action has been commenced against the violation during that time by the Town or any person directly affected.
6. In considering the request, the ZBA may request additional information such as a professionally prepared site plan. In granting a permit, the ZBA may attach appropriate conditions to the approval.

II Application Fees. At the time of application, a nonrefundable fee shall be submitted together with the application to cover the costs of the advertising, notification, and processing of the application. The applicant shall be required to pay for any special investigative studies deemed necessary by the ZBA. Any application that is withdrawn prior to consideration by the ZBA, deemed incomplete by the ZBA, or tabled for further consideration by the ZBA shall require the submission of another nonrefundable fee prior to further consideration of the application by the ZBA. A schedule of application fees is available at the Milton Town office.

(Amended 3/9/10)

**ARTICLE IX
PENALTIES**

A violation of this ordinance shall be subject to fines or penalties as specified by NH RSA 676:17, as amended.

**ARTICLE X
SEVERABILITY**

If any section, provision, portion, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect, impair or invalidate any other section, provision, portion, clause or phrase of this ordinance.

**ARTICLE XI
THE GROUNDWATER USE RESTRICTION DISTRICT**

- A. STATEMENT OF PURPOSE** - The purpose of this section is, in the interest of public health, safety and general welfare, to prohibit the use of groundwater potentially degraded by the Milton Municipal Landfill, through the establishment of a Groundwater Use Restriction District. All properties in the Groundwater Use District are in the service area of the Milton Water District. An additional purpose of this section is to require that all development within the Groundwater Use District be connected to that municipal water supply system.
- B. LOCATION** - The Groundwater Use Restriction District is an overlay Zoning District. The boundary of the District has been set to include lots that are down gradient of the Milton Municipal Landfill. The District shall be comprised of the following areas and lots.
1. Those areas defined and mapped as the Groundwater Use Restriction District, as may be amended in the future, included on Plate 1 (attached).
 2. The following lot numbers of Tax Map 32 are included in the Groundwater Use Restriction District. Lot #'s 30, 31, 73, 74, 75, 76, 133 through 153, 155, 156, and 157.
- C. DEVELOPMENT REGULATIONS AND PROHIBITIONS:**
1. Pumping of groundwater from any well, trench, sump, or other structure for residential, irrigation, agricultural, or industrial purpose is prohibited, unless it is for the specific purpose of pumping groundwater out of a sump to keep a cellar from flooding during periods of high groundwater conditions.
 2. All proposed residential, commercial, and industrial developments in the District shall be connected to and served by the municipal water supply system (Milton Water District).
 3. The requirements, restrictions, and prohibitions of the underlying zoning districts shall continue to apply to the extent that they are not inconsistent with the provisions of this section.

SEE ATTACHED: GROUNDWATER USE RESTRICTION DISTRICT MAP

RESERVED FOR GROUNDWATER USE RESTRICTION DISTRICT MAP

ARTICLE XII
INDUSTRIAL AND COMMERCIAL OUTDOOR LIGHTING ORDINANCE
(Adopted 3/13/01)

PURPOSE - Appropriate outdoor lighting increases safety, enhances the Town's nighttime character and helps provide security. Excessive light creates glare and sky glow, and increases energy cost. Light trespass reduces privacy.

This ordinance is intended to minimize or eliminate the problems associated with light trespass, glare and sky glow.

A. DEFINITIONS - For the purposes of this Ordinance, terms shall be defined as follows:

1. **Direct Light** - Light emitted directly from the lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.
2. **Dark Sky Specification** - Specification of the International Dark-Sky Association, 3225 N. First Ave., Tucson AZ 85719, <http://www.darksky.org>, intended to control sky-glow.
3. **Fixture** - The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror and/or a refractor or lens.
4. **Flood or Spot Light** - Any light fixture or lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction.
5. **Glare** - Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases causing momentary blindness.
6. **Height of Luminaire** - The vertical distance from the ground directly below the centerline of the luminaire to the lowest direct-light-emitting part of the luminaire.
7. **Indirect Light** - Direct light that has been reflected or has been scattered off other surfaces.
8. **Lamp** - The component of a luminaire that produces the actual light.
9. **Light Source** - Light source includes any reflector, refractor or globe as well as the lamp.
10. **Light Trespass** - The shining of light produced by a luminaire or luminaires beyond the boundaries of the property on which it is located.
11. **Lumen** - A unit of luminous flux. One-foot candle is one lumen per square foot. For the purposes of this Ordinance, the lumen-output values shall be the INITIAL lumen output ratings of a lamp.
12. **Luminaire** - This is the complete lighting system, and includes a lamp or lamps, lenses and a fixture.
13. **Outdoor Lighting** - The night time illumination of an outside area or object by any man-made device located outdoors that produces light by any means.
14. **Shielding** - Opaque attachment to a lighting fixture to prevent direct light from shining in a particular direction.
15. **Temporary Outdoor Lighting** - The specific illumination of an outside area or object by any man-made device located outdoors that produce light by any means for a period of less than 7 days, with a least 180 days passing before being used again.

B. REGULATIONS - All industrial and commercial outdoor lighting installed for industrial and commercial uses, in the Town of Milton shall be in conformance with the requirements established by this Ordinance.

1. EXTERIOR LIGHTING:

- a. **Lighting Plan:** A lighting plan shall be prepared indicating fixture specifications, placement, and area lighting intensities on the ground. This plan shall be submitted as part of the plat for site plan review.
 - (1) Fixture specification and placement will follow the concepts shown on Diagram A (Note that all light must shine in a generally downward direction).
 - (2) No direct light shall shine beyond the applicant's property boundaries.
 - (3) Although correct placement and specification should give desired distribution, shielding may be added to further control light distribution.
 - (4) Height of luminaire shall be limited to 25 feet unless waived by the Planning Board for specific applications.
- b. **Boundary Light Intensity:** All Lighting fixtures shall be specified, placed and directed so that total illumination intensities at all property boundaries does not exceed 1.0 foot candle per Diagram A.
- c. **Glare:** No operation or activity shall be conducted so as to cause or create unnecessary glare. Any operation or activity producing unremediable glare shall be conducted so that total illumination intensity does not exceed 1.0 foot candle at the property boundaries.
- d. **Appropriate Intensity for the Need:** Outdoor lighting illumination intensities shall be the minimum required to meet operational and safety standards. It is recommended that parking area and other non-secure area lighting be reduced or extinguished outside of business hours.
- e. **Entrance and Exit Lighting:** When building entrances and exits need to be lighted, minimum power fixtures that carry the dark sky specification shall be used. If these fixtures raise the property boundary illumination intensity above 1.0 foot candle, shielding shall be added.

2. RECOMMENDATIONS:

- a. **Fixture Type:** It is recommended that high-pressure sodium lighting not be used.
- b. **Reflective Surfaces:** Consideration should be given to utilizing material that reflects the minimum amount of light while meeting the surfacing needs of the particular area.

3. EXCEPTIONS:

- a. Lighting of the United States Flag.
- b. Customary holiday lighting.
- c. Emergency lighting required by a public agency in the performance of its duties.

4. EFFECTIVE DATE AND GRANDFATHERING OF NONCONFORMING LIGHTING:

- a. This ordinance shall take effect immediately upon approval by the voters of the Town of Milton at an annual or special Town Meeting and shall supersede and replace all previous ordinances pertaining to outdoor lighting.
- b. All lighting lawfully in place prior to the date of the Ordinance shall be grandfathered. A grandfathered fixture may be replaced with a similar fixture, but if the fixture is moved or relocated the requirements of this Ordinance must be applied.

5. AUTHORIZATION FOR INSTALLATION OF PUBLIC AREA AND ROADWAY

LIGHTING - Installation of any new public-area and roadway lighting fixtures, other than for traffic control, shall be specifically approved by the Board of Selectmen.

6. NOTIFICATION REQUIREMENTS - The Town of Milton site plan application shall include a statement asking whether the planned project will include any outdoor lighting. A copy of this ordinance shall be attached to all electrical permits for this purpose.

7. VIOLATIONS, LEGAL ACTIONS AND PENALTIES:

- a. **Violations and legal actions:** If, after investigation the Code Enforcement Officer finds that any provision of the Ordinance is being violated, he shall give notice by hand delivery or by certified mail, return-receipt requested, of such violation to the owner and/or to the occupant of such premises, demanding that the be abated within thirty (30) days of the date of hand delivery or of the date of mailing of the notice. If the violation is not abated within the thirty-day period, the Code Enforcement Officer may institute actions and proceedings, legal and/or equitable, to enjoin, restrain, or abate any violations of the Ordinance and to collect the penalties for such violations.
- b. **Penalties:** A violation of this Ordinance, or any provision thereof, shall be punishable by a civil penalty of up to one hundred dollars (\$100) and each day of violation after the expiration of the thirty-day period provided in Paragraph 1 shall constitute a separate offense for the purpose of calculating the civil penalty.

**SEE ATTACHED DIAGRAM: MILTON LIGHTING ORDINANCE ACCEPTABLE
LIGHTING CONFIGURATIONS**

RESERVED FOR LIGHTING DIAGRAM

ARTICLE XIII
WETLAND CONSERVATION ORDINANCE
(Adopted 3/09/2005)

These Regulations are intended to:

1. Control and regulate the development of structures and of land use on jurisdictionally occurring wetlands which could contribute, if uncontrolled, to pollution of surface and ground water by wastewater or septic systems or toxic substances.
2. Prevent unnecessary or excessive expense to the Town in providing and maintaining essential services and utilities as a result of inharmonious use of wetlands.
3. Prevent the destruction of natural wetlands which provide flood protection and water storage, provide recharge of groundwater supply and provide augmentation of stream flow during dry periods.
4. Encourage those uses that can be appropriately and safely located in wetland areas.
5. Protect presently existing natural wetland wildlife habitats.
6. Prevent damage to abutters' structures and properties.

A. Description.

1. A Wetland (also see "wetlands" and "wetlands buffers" definitions in Article II of the Milton Zoning Ordinance) is hereby determined to be an area which would be delineated as a wetland using the methodology required by the State of New Hampshire Department of Environmental Service Wetlands Bureau, surface waters, and including the buffer requirements of section H of this Ordinance. The Department of Environmental Service Wetlands Bureau requires wetlands to be delineated using a combination of the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, Environmental Laboratory, Department of the Army, 1987 and the Field Indicators for Identifying Hydric Soils in New England, Version 2, New England Interstate Water Pollution Control Commission, 1998. As of the writing of this Ordinance the approved wetlands delineation methodology uses three parameters, hydric soils, hydrophytic vegetation, and wetland hydrology. The precise location of a wetland boundary in any particular case shall be determined by on-site inspection of soil types and vegetation by a certified wetland scientist using the methodology required by the New Hampshire Department of Environmental Service Wetlands Bureau.
2. In all cases where the rules of this Ordinance differ from those of the underlying zoning district in the Town of Milton, any conflict between such Regulations shall be resolved by applying the more-restrictive Regulation.
3. Areas to be excluded from this Ordinance are:
 - a. Where the wetland or surface water is an isolated wetland smaller than three thousand (3,000) sq. ft.
 - b. The wetland or surface water is a vegetated swale or roadside ditch, a sedimentation/detention basin, an agricultural/irrigation pond, a septage lagoon, or a wetland on converted cropland.

B. Purpose - The purpose of this Ordinance is to protect the public health, safety, and general welfare by controlling and guiding the use of land areas, which have been found to be subjected to high water tables for extended periods of time.

Wetlands are a critical natural resource, which effect water quality, flooding, wildlife, recreation, and aesthetics, and their protection is a goal of the Master Plan. Wetlands protect surface water quality by reducing the velocity of surface water runoff, allowing for the deposit of sediment and

nutrients. Wetlands protect shorelines from erosion. Wetlands absorb water during times of flooding, thus helping to reduce floodwater elevations. Wetlands help to maintain the quality of groundwater recharge. Wetlands provide habitat for a wide variety of wildlife, including fish, birds, deer and other animals. Wetlands contribute to a broad range of recreational opportunities, including canoeing, hunting, fishing and bird watching. Wetlands contribute to the aesthetic values of the Town, providing open space, natural vistas, landform contrasts, and early autumn foliage. These purposes, in combination with the fact that wetlands are often ill suited to development activities; demonstrate why the long term protection of wetlands contributes greatly to the welfare of the community.

The publication *Buffers for Wetlands and Surface Waters*, Chase, Deming and Latawiec, Revised. May 1997 recommends that buffers around wetlands also be protected since unbuffered wetlands may not be able to adequately fulfill their functions. The guidebook defines buffers as “a naturally vegetated upland area adjacent to a wetland or surface water.” In this definition, “naturally vegetated” includes the following: uncut or undisturbed forest, minimally disturbed or managed forest, and abandoned pasture or fields.

C. Permitted Uses Within the Naturally Vegetated Buffer - Permitted uses shall be as follows:

1. Any use that does not involve the erection of a structure or does not alter the surface configuration of the land by the addition of fill or dredging, except common agricultural land drainage, provided that such use is otherwise permitted in the use district of a given wetland.
2. Forestry or tree farming, in compliance with the provision of chapter 227-J (Logging and the Law) of the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, Rev. Feb. 2000.
3. Agriculture, including grazing, farming, truck gardening and harvesting of crops.
4. Water impoundment and the construction of well water supplies, pending State approval.
5. Drainage ways such as streams, creeks or other paths of normal runoff.
6. Wildlife habitat development and management.
7. Recreation uses, excepting such as may be inconsistent with the purpose and intent of this Ordinance.
8. Conservation areas, nature trails and snowmobile trails.
9. Open space in accordance with the Subdivision Regulations and other sections of this chapter.
10. Any wetland impact, which has the approval of the New Hampshire Wetlands Bureau, shall be a permitted project.

D. Conditional Uses - Under the provisions of RSA 674:21, Subdivision II, the Planning Board may grant approval of a conditional use permit for the construction of streets, roads and other access ways and utilities, including pipelines, power lines and other transmission lines, provided that all of the following conditions are found to exist:

1. No alternative location outside the wetland, or which has less detrimental impact on a wetland, is feasible.
2. The proposed construction is essential to the productive use of other land, which is not within the wetland.
3. Design, construction and maintenance methods will be such as to minimize detrimental impact upon the wetland and will include restoration of the site as nearly as possible to its original grade and condition.
4. Economic advantage is not the sole reason for the proposed location of the construction.

E. Special Exceptions for Existing Lots:

1. On an existing lot, the erection of a structure or septic system within the wetland may be permitted by special exception if the Zoning Board of Adjustment, after due public notice and public hearing, finds that such exception complies with all other applicable requirements set forth in this Article and with each of the following:
 - a. The lot upon which the exception is sought was an official lot of record, as recorded in the Strafford County Registry of Deeds, or has been accepted and subsequently approved by the Planning Board prior to the date on which this Article was posted and published in the Town, August 20, 2003.
 - b. The use for which the exception is sought cannot reasonably be carried out on a portion or portions of the lot, which are outside the wetland.
 - c. The design and construction of the proposed septic system will, to the extent practical, be consistent with the purpose and intent of this Article.
 - d. The proposed septic system will not create a threat to individual or public health, safety and welfare, such as the degradation of ground or surface water, or damage to surrounding properties.
2. Prior approval shall be obtained from the Planning Board where site plan review is required. At the time of submission to the Zoning Board of Adjustment, the Conservation Commission, and the Health Officer shall be informed of the application for special exception.
3. This Ordinance shall not prohibit the construction of principal and accessory structures within the buffer zone or for unimproved lots that were approved for subdivision by the Planning Board or which otherwise legally existed on or before August 20, 2003.

F. Provisions for Existing Uses:

1. Structures and uses existing prior to the date on which this Article was enacted may be continued, provided that such uses shall not be expanded further to encroach upon the wetland or designated buffer zone.
2. Notwithstanding other provisions of this Article, the construction of attached additions to one to three-family dwellings shall be permitted within the wetland buffer, provided that:
 - a. The dwelling lawfully existed prior to the date on which this Article was enacted.
 - b. The number of dwelling units is not increased.
 - c. The proposed construction conforms to all other applicable Ordinances and Regulations of the Town of Milton.
3. Where an existing building within the wetland or buffer zone is destroyed or in need of extensive repair, it may be rebuilt, provided that such rebuilding is completed within one (1) year of the event causing destruction, the new or rebuilt structure shall not extend further into the wetland or buffer zone than the original foundation and the result will not be a new or increased threat to the wetland.

G. Lot Size Determination in Wetlands:

1. Wetlands may be used to fill up to twenty-five percent (25%) of the minimum lot size or density requirements of Town Ordinances and Subdivision and Planned Unit Development Regulations, provided that the non-wetland area is sufficient in size and configuration to adequately accommodate all buildings and required utilities, such as sewage disposal and water supply, including primary and auxiliary leach field locations, within required zoning setbacks from the wetland area.

2. Lots served by municipal water and sewer may use wetlands to fulfill up to fifty percent (50%) of the minimum required lot size.
3. No areas of surface water may be used to satisfy minimum lot sizes.

H. Buffer Zone and Setback Requirements:

1. No septic system, leach field or other waste-disposal facility shall be installed closer than fifty (50) feet of any point in a wetland. Any more stringent State rule shall supercede this Article.
2. Building structures, roads and parking areas, shall not be allowed closer than fifty (50) feet from any point in a wetland. The area between the building structures and naturally vegetated buffer shall be stabilized with lawn or plantings.
3. A naturally vegetated buffer of undisturbed land, not less than twenty-five (25) feet from any point in the wetland, shall be maintained around all wetlands.

I. Reclassification of Wetlands - Challenge of classification. If the wetland classification is challenged by the applicant, an abutter, a landowner, the Code Enforcement Officer, the Conservation Commission or the Planning Board, petition shall be made, in writing, by the challenger to the Zoning Board of Adjustment. The Zoning Board of Adjustment shall determine whether a certified wetlands scientist shall conduct an on-site investigation and at the expense of the applicant. The certified wetland scientist's investigation shall be in accordance with Section A.1. of this Ordinance.

J. Restoration of Altered Soils - Any wetland altered in violation of this chapter shall be restored at the expense of the violator(s).

K. Additional Information - No approval or waiver of permits by State or Federal Agencies shall preempt the ability of the Planning Board or the Zoning Board of Adjustment to seek additional information or to make an independent judgment as to the acceptability of a lot or alteration of land.

ARTICLE XIV
SEXUALLY ORIENTED BUSINESS ORDINANCE
(Adopted 3/09/05)

- A. AUTHORITY** - Pursuant to the authority conferred by chapter 674:16 of the New Hampshire Revised Statutes, the Town of Milton adopts the following ordinance regulating Sexually Oriented Business. This Ordinance shall be considered part of the Zoning Ordinance of the Town of Milton for the purpose of administration and appeals under State law. If any provisions of this Ordinance differs or appears to conflict with any provision of the Milton Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be applied.
- B. PURPOSE** - It is the purpose of this Ordinance to regulate Sexually Oriented Businesses and related activities to promote the health, safety, and general welfare of the citizens of the Town of Milton and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of Sexually Oriented Businesses within the Town of Milton. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor the effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene materials.
- C. DEFINITIONS** - Pursuant to this Ordinance, the following definitions shall apply to Sexually Oriented Business:
- 1. ADULT BUSINESS BOOKSTORE OR ADULT VIDEO STORE** - A business that utilizes more than 15% of the total display, shelf, rack, table, stand and floor area, for the display and sale or rent of the following:
 - a.** Books, magazine, periodicals or other printed matter, or photographs, films, motion picture, video cassettes, slides, tapes, records, cd-roms or other forms of visual or other audio representation which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1; or
 - b.** Instrument, devices or paraphernalia, which are designed for use in connection with "sexual conduct" as, defined in RSA 571-B:1, other than birth control devices.

AN ADULT BOOKSTORE OR ADULT VIDEO STORE DOES NOT INCLUDE AN ESTABLISHMENT THAT SELLS BOOKS AND PERIODICALS AS AN INCIDENTAL OR ACCESSORY PART OF ITS PRINCIPAL STOCK AND TRADE AND DOES NOT DEVOTE MORE THAN 15% OF THE TOTAL AREA OF THE ESTABLISHMENT TO THE SALE OF BOOKS AND PERIODICALS.
 - 2. ADULT MOTION PICTURE THEATER** - An establishment with a capacity of five (5) or more person, where for any form of consideration, films, motion picture, video cassettes, slides or similar photographic reproduction are shown, and in which a substantial portion of the total presentation time is devoted to the showing material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 572-B:1 for the observation by patrons. For subsection 3, 4, 5, 6, 7, 8, and 9, a "substantial portion of the total presentation time" shall mean the presentation of films or shows described above for viewing on more than seven (7) days within any thirty (30) consecutive day period.

3. **ADULT MOTION PICTURE ARCADE** - Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machine, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.
4. **ADULT DRIVE-IN THEATER** - An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation motion pictures, films, theatrical production and other forms of visual productions, for any form of consideration to persons in motor vehicle or on outdoor seats, in which a substantial portion of the total presentation being presented for observation by patrons is devoted to the showing of material which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.
5. **ADULT CABARET** - A nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features live performances which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1 and/or feature films, motion picture, video cassettes slides or other photographic reproductions, a substantial portion of the total presentation of which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.
6. **ADULT MOTEL** - A motel or similar establishment offering public accommodation for any form of consideration which provides patrons with closed circuit televisions, transmissions, films, motion pictures, video cassettes, slides or other photographic reproduction in which a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction or description of materials which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.
7. **ADULT THEATER** - A theater, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on activities which meet the definition of "harmful to minor" an/or "sexual conduct" as set forth in RSA 571-B:1.
8. **NUDE MODEL STUDIO** - A place where a person who appears in a state of nudity, whether male or female, and displayed in a state of sexual arousal and is observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration or such display is characterized by an emphasis on activities which meets the definition of "harmful to minors" and/or "sexual nature" as set in RSA 571-B:1.
9. **NUDITY OR A STATE OF NUDITY** - Means the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the areola; or human male genitals in discernibly turgid state even if completely and opaquely covered.
10. **SEMI-NUDE OR SEMI-NUDITY** - Means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.
11. **SEXUAL ENCOUNTER CENTER** - A business or commercial enterprise that as one of its primary business purpose, offers for any form of consideration:
 - a. physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
 - b. activities between male and female and/or persons of the same sex when one or more person is in the state of nudity, or where the activities in (a) or (b) is characterized by and emphasis

on activities which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1.

12. SEXUALLY ORIENTED BUSINESS - Means an adult arcade, adult bookstore or adult video store, adult cabaret, adult drive in theatre, adult motel, adult motion picture theater, adult theater, nude model studio, or sexual encounter center as those terms are defined herein.

13. SPECIFIED SEXUAL ACTIVITIES - Means and includes any of the following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;
- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- c. Masturbation, actual or simulated; or
- d. Excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

D. LOCATION RESTRICTIONS - A Sexually Oriented Business may only be allowed in the Commercial/Residential Zone and Industrial/Commercial Zone. For a use to be established under this Ordinance the applicant must demonstrate that the proposed site satisfies all the site requirement of the Site Plan Review from the Planning Board and must obtain a Special Exception from the Zoning Board of Adjustment.

For existing businesses in any zone which sells sexually explicit goods, paraphernalia or adult materials, but does not meet the 15% threshold outline in Section C, such goods and paraphernalia shall be located either behind a counter or in a separate room or enclosure where citizens under the age of eighteen (18) are not allowed to enter. Such sexually explicit goods and paraphernalia must be located so the materials in question are not within view of minors.

A Sexually Oriented Business use may only be allowed by the Zoning Board of Adjustment as a Special Exception, subject to the following conditions:

1. No Sexually Oriented Business shall be permitted within 1,000 feet of the property line of a church, synagogue, mosque, temple or building, which is used primarily for religious worship and related religious activities;
2. No Sexually Oriented Business shall be permitted within 1,000 feet of the property line of a public or private educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education school, junior colleges, and universities; school includes the school ground, but does not include the facilities used primarily for another purpose and only incidentally as a school;
3. No Sexually Oriented Business shall be permitted within 1,500 feet of the property line of a public park or recreational area which has been designated for park or recreational activities including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, skating rink, pedestrian/bicycle paths, or other similar public recreation land which is under the control, operation, or management of the Town or any of its Departments, Boards or Commission;
4. No Sexually Oriented Business shall be permitted within 500 feet of any posted school bus stop;
5. No Sexually Oriented Business shall be permitted within 500 feet of a town border.

- 6. No Sexually Oriented Business shall be permitted within 500 feet of the property line of a lot used for residential purposes.
- 7. Sexually Oriented Businesses shall only be permitted in single use, freestanding structures. In no instances shall Sexually Oriented Business share premises, facilities or buildings with businesses, which are not sexually oriented.
- 8. There shall be a minimum of 1,000 feet between any two Sexually Oriented Businesses. This shall be measured in a straight line.
- 9. The exterior of the site shall be maintained daily in a condition that is free and clear of any sexual paraphernalia or packaging.
- 10. No sexually explicit material or advertising shall be visible from outside the building.
- 11. No one under the age of eighteen (18) shall be permitted inside such a use, structure, or business, and a procedure shall be developed to keep those under eighteen (18) from entering the building.
- 12. All operators and employees shall be of good moral character. No operator or employee shall have been convicted of a misdemeanor or felony of sexually related nature.
- 13. No Sexually Oriented Business shall be permitted within 1,000 feet of the junction of Route 125 and Route 75 and Route 125 and Route 153.

E. SIGNAGE - Signage shall comply in all respects with all Town of Milton Ordinances, codes or regulations governing signs and in addition shall comply with the provisions of this section.

No signs, whether primary or secondary, shall contain photographs, silhouettes, drawings, images or pictorial representation in any manner depicting or making linguistic reference to nudity, semi-nudity, specified anatomical areas, specified sexual activity, or any device or paraphernalia designed for use in connection with specified sexual activity and may contain only the name of the enterprise.

F. ADMINISTRATION - In addition to meeting the specific conditions set out in this Ordinance, no Sexually Oriented Business shall be established without first obtaining a Special Exception from the Zoning Board of Adjustment. Any such application shall be subject to all of the Special Exception criteria and discretionary authority of the Zoning Board of Adjustment set out in Article XI of the general Zoning Ordinance.

G. PUBLIC NUISANCE - Violation of the use provisions of this Ordinance is declared to be a public nuisance per se, which shall be abated by the Town of Milton by way of civil abatement procedures.

Limiting Clause: Nothing in this Ordinance is intended to authorize, legalize or permit the establishment operation or maintenance of any business, building or use which violates any Town of Milton Ordinance or statute of the State of New Hampshire regarding public nuisances, sexual conduct, lewdness, or obscene or harmful matter or the exhibition or public display thereof.

H. SEVERABILITY - The invalidity of any provision of this Ordinance shall not affect the validity of any other provisions of this Ordinance or of the Zoning Ordinance as a whole.

I. EFFECTIVE DATE - This Ordinance shall be effective immediately upon adoption by the **Milton Town meeting**.

ARTICLE XV
THE EXCAVATION OVERLAY DISTRICT
(Adopted 3/15/06)

A. STATEMENT OF PURPOSE - The purpose of this section is, in the interest of public health, safety and general welfare, to restrict excavation of earth as defined and regulated by RSA 155-E and this Ordinance to those areas defined and mapped by or from USGS/NH GRANIT data sources as likely to contain land(s) suitable for the commercial taking of earth.

B. LOCATION - The Excavation Overlay District is an overlay zoning district in which each excavation is a permitted use. The district shall comprise of the following areas and lots:

1. Those areas defined and mapped on the Sand and Gravel Excavation Overlay Map, as may be amended in the future, and
2. The following Tax Map and Lot #s of the present record:
 - Tax Map #1- Lot #3;
 - Tax Map #2- Lot #1, 2, 3, 4, 14.5;
 - Tax Map #4- Lot #2, 19, 21;
 - Tax Map #8- Lot #6, 7, 9;
 - Tax Map #9- Lot #1, 10, 100, 102, 106, 110, 111, 112, 113, 116, 117, 119, 120, 121, 122, 123, 124, 125, 125.1;
 - Tax Map #10- Lot #1, 3, 4, 5, 8, 9, 9.1;
 - Tax Map #11- Lot #7, 11, 12, 13, 14;
 - Tax Map #12- Lot #1, 2, 5, 6, 7, 8, 10, 13, 15, 16, 19, 20;
 - Tax Map #13- Lot #1, 3;
 - Tax Map #14- Lot #1, 2, 3, 6, 7, 8, 10, 14, 15, 17, 18, 19, 21, 22, 23, 25, 29, 30, 34, 36;
 - Tax Map #15- Lot #4;
 - Tax Map #17- Lot #22, 23, 24, 25;
 - Tax Map #18- Lot #4, 13, 14, 15;
 - Tax Map #19- Lot #2, 13;
 - Tax Map #20- Lot #1;
 - Tax Map #21- Lot #11, 12;
 - Tax Map #22- Lot #21, 31.1;
 - Tax Map #23- Lot #44;
 - Tax Map #26- Lot #23;
 - Tax Map #27- Lot #1, 2, 3, 4, 11, 12;
 - Tax Map #28- Lot #4, 21, 28.1, 49, 50, 50.2, 50.3, 51, 52;
 - Tax Map #30- Lot #25;
 - Tax Map #32- Lot #28, 30, 37A, 63, 67, 69, 75, 79, 117, 132;
 - Tax Map #33- Lot #86, 203, 211, 214, 251.1, 251.2, 251.3; 252;
 - Tax Map #34- Lot #11, 12;
 - Tax Map #37- Lot #100;
 - Tax Map #45- Lot #53, 54, 54A, 58, 59;
 - Tax Map #47- Lot #15, 15.1, 18, 21, 22, 24, 26, 27, 33, 35, 36, 38;
 - Tax Map #49- Lot #39, 40, 43, 45, 46, 49.

C. DEVELOPMENT REGULATIONS AND PROHIBITIONS- The requirements, restrictions and prohibitions of the underlying zoning districts shall continue to apply to the extent that they are not inconsistent with the provisions of this section.

SEE ATTACHED: SAND AND GRAVEL EXCAVATION OVERLAY MAP

RESERVED FOR SAND AND GRAVEL EXCAVATION OVERLAY MAP

ARTICLE XVI
GROUNDWATER PROTECTION OVERLAY DISTRICT
(Adopted 3/15/06)

I. AUTHORITY - The Town of Milton hereby pursuant to RSA 674:16-21; adopts this Groundwater Protection Overlay District.

II. PURPOSE - The purpose of this Ordinance is, in the interest of public health, safety, and general welfare, to preserve, maintain, and protect existing and potential groundwater supplies and related groundwater recharge areas within the Town, to prevent development and land use practices that would contaminate or reduce the recharge of the identified aquifers, to provide for future growth and development of the Town, in accordance with the Master Plan, by ensuring the future availability of public and private water supplies, and to encourage uses that can appropriately and safely be located in the groundwater recharge areas.

III. DEFINITIONS

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

B. Groundwater: subsurface water that occurs beneath the water table in soils and geologic formations.

C. Impervious: not readily permitting the infiltration of water.

D. Impervious Surface: a surface through which regulated substances cannot pass when spilled.

1. Impervious surfaces include but are not limited to: concrete unless unsealed cracks or holes are present; asphalt; earthen, wooden, or gravel surfaces. Other surfaces, which could react with or dissolve when in contact with the substances stored on them, are not considered impervious surfaces.

E. Junkyard: as defined under RSA 236:112.

F. Outdoor Storage: storage of materials where they are not protected from the elements by a roof, walls, and a floor with an impervious surface.

G. 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.

H. Regulated Substance: petroleum, petroleum products, and substances listed under 40 CFR 302, 7-1-90 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.

I. Sanitary Protective Radius: The area around a well, which must be maintained in its natural state as required by Env-Ws 378 or 379 (for community water systems) and Env-Ws 372.13 (for other public water systems).

J. Secondary Containment: a structure such as a berm or dike with an impervious surface, which is adequate to hold at least 110% of the volume of the largest regulated-substances container that will be stored there.

K. Snow Dump: For the purposes of this Ordinance, a location where snow which is cleared from roadway sand/or motor vehicle parking areas is placed for disposal.

L. Stratified-Drift Aquifer: A geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial melt water, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.

M. Surface Water: streams, lakes, ponds and tidal waters, including marshes, watercourses and other bodies of water, natural or artificial.

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

IV. GROUNDWATER PROTECTION DISTRICT - The Groundwater Protection District is an overlay district which is superimposed over the existing underlying zoning, including within its boundaries the Wellhead Protection Areas and Stratified Drift Aquifers shown on the map entitled, Town of Milton Groundwater Protection Overlay District, dated January 5th 2006 prepared by Strafford Regional Planning Commission.

V. APPLICABILITY - This Ordinance applies to all uses in the Groundwater Protection District, except for those uses exempt under Article XI of this Ordinance.

VI. PERFORMANCE STANDARDS - The following Performance Standards apply to all uses in the Groundwater Protection District unless exempt under Article XI-EXEMPTIONS:

A. For any use that will render impervious more than 15%, or more than 2,500-square feet of any lot, whichever is greater, a stormwater management plan shall be prepared which the Planning Board determines is consistent with Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, Rockingham County Conservation District, August 1992 and Best Management Practices for Urban Stormwater Runoff, NH Department of Environmental Services, January 1996.

B. Stormwater management plans prepared pursuant to paragraph A shall demonstrate that stormwater recharged to groundwater will not result in violation of Ambient Groundwater Quality Standards (Env-Ws 1403.05) at the property boundary;

- C. 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, August 1998, and any subsequent revisions;
- D. All regulated substances stored in containers with a capacity of 5-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;
- E. Facilities where regulated substances are stored must be secured against unauthorized entry by means of a door(s) and/or gate(s), which is (are) locked when authorized personnel are not present and which must be inspected weekly by the facility owner;
- F. Outdoor storage areas for regulated substances 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;
- G. Secondary containment must be provided for outdoor storage of regulated substances if an aggregate of 331-gallons or more of regulated substances are stored outdoors on any particular property;
- H. 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.

VII. 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 (Article VIII) or Conditional Uses (Article IX). All uses must comply with the Performance Standards unless specifically exempt under Exemptions (Article XI).

VIII. PROHIBITED USES - The following uses are prohibited in the Groundwater Protection District.

- A. The siting or operation of a hazardous waste disposal facility as defined under RSA 147-A;
- B. The siting or operation of a solid waste landfill;
- C. The outdoor storage of road salt or other deicing chemicals in bulk;
- D. The siting or operation of a junkyard;
- E. The siting or operation of a snow dump;
- F. The siting or operation of a wastewater or septage lagoon, unless permitted by DES.

IX. CONDITIONAL USES - The Planning Board may grant a Conditional Use Permit for a use, which is otherwise permitted within the underlying district, if the permitted use is or is involved in one or more of the following:

- A. 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 plan is in place to prevent, contain, and minimize releases from catastrophic events such as spills or fires, which may cause large releases of, regulated substances;
- B. Any use that will render impervious more than 15% or 2,500-square feet of any lot, whichever is greater. In granting such approval the Planning Board must first determine that

the proposed use is not a prohibited use and will be in compliance with the Performance Standards as well as all applicable local, State and federal requirements. 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.

X. EXISTING NONCONFORMING USES - Existing nonconforming uses may continue without expanding or changing to another nonconforming use, but must be in compliance with all applicable State and federal requirements, including Env-Ws 421, Best Management Practices Rules.

XI. EXEMPTIONS - The following uses are exempt from the specified provisions of this Ordinance as long as they are in compliance with all applicable local, State, and federal requirements:

- A. Any private residence is exempt from all Performance Standards (Article VI);
- B. Any business or facility where regulated substances are not stored in containers with a capacity of 5 gallons or more is exempt from Performance Standards E through H;
- C. Storage of heating fuels for on-site use or fuels for emergency electric generation, provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection, and secondary containment in place, is exempt from Performance Standard E;
- D. 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 Performance Standards E through H;
- E. Storage and use of office supplies are exempt from Performance Standards E through H;
- F. Temporary storage of construction materials on a site where they are to be used is exempt from Performance Standards E through H;
- G. The sale, transportation, and use of pesticides as defined in RSA430:29 XXVI are exempt from all provisions of this overlay district;
- H. 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 Performance Standards E through H.
- I. Underground storage tank systems and aboveground storage tank systems that are in compliance with applicable State rules are exempt from inspections under Maintenance and Inspection (Article XIII).

XII. RELATIONSHIP BETWEEN STATE AND LOCAL REQUIREMENTS - Where both the State and the municipality have existing requirements the more stringent shall govern.

XIII. MAINTENANCE AND INSPECTION

- A. For uses requiring Planning Board approval for any reason, a narrative description of maintenance requirements for structures required to comply with Performance Standards, shall be recorded so as to run with the land on which such structures are located, at the Registry of Deeds for Strafford County. The description so prepared shall comply with the requirements of RSA 478:4-a.
- B. Inspections may be required to verify compliance with Performance Standards. Such inspections shall be performed by the Code Enforcement Officer at reasonable times with prior notice to the landowner.
- C. All properties within the Groundwater Protection District known to the Code Enforcement Officer as using or storing regulated substances in containers with a capacity of 5-gallons or more, except for facilities where all regulated substances storage is exempt from this Ordinance under Article XI, shall be subject to inspections under this Article.
- D. The Selectmen may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Selectmen as provided for in RSA 41-9:a.

XIV. ENFORCEMENT PROCEDURES AND PENALTIES - Any violation of the requirements of this Ordinance shall be subject to the enforcement procedures and penalties detailed in RSA 676.

XV. SAVING CLAUSE - If any provision of this Ordinance is found to be unenforceable, such provision shall be considered separable and shall not be construed to invalidate the remainder of the Ordinance.

XVI. EFFECTIVE DATE - This Ordinance shall be effective upon its passage.

RESERVED FOR GROUNDWATER PROTECTION MAP

ARTICLE XVII
SHORELAND PROTECTION OVERLAY DISTRICT
(Revised & Adopted 3/11/14)

- A. AUTHORITY** - Pursuant to the authority granted by RSA 483-B:8, RSA 674:16 - RSA 674:21, this Ordinance is adopted by the Town of Milton, New Hampshire in order to protect the public health, safety and general welfare.
- B. PURPOSE** - This Ordinance establishes standards for the subdivision, use and development of shoreland adjacent to public waters as defined herein for the purpose of minimizing degradation of shoreland and assuring retention of the benefits provided by such shoreland. These benefits include:
1. Maintenance of safe and healthy conditions;
 2. Prevention and/or control of water pollution;
 3. Reduction or elimination of flooding and accelerated erosion;
 4. Protection of wetlands and their important natural functions;
 5. Maintenance of water quality and related stream flows during low flow periods;
 6. Protection of shoreland cover as a means of protection of natural beauty and the scenic qualities, which are critical attributes of the Town of Milton.
 7. Protection of water resources and their related watersheds to insure an adequate quantity/supply of the highest quality water,
 8. Protection of water resources by managing the use of land resources and balancing their use and development consistent with conservation and development needs
 9. Preservation of shore-side (riparian) buffers that filter out pollutants before water discharges into lakes, streams and wetlands,
- C. DEFINITIONS** - Shall be in accordance with RSA 483-B: 4, except as listed below:
1. **Boat Slip** - An area of water 20-feet long and at least 2-feet deep and 6 feet in width measured at and located adjacent to a structure to which a watercraft may be secured.
 2. **Protected Shoreland** - For natural freshwater bodies without artificial impoundments, for artificially impounded fresh water bodies and for streams, brooks and rivers, all land located within 250-feet of the reference line of waters shown on the Milton Wetlands Map.
 3. **Public Waters** - All fresh water bodies listed in the official list of public waters published by the department pursuant to RSA 271: 20, II, whether they are great ponds or artificial impoundments. Rivers, streams, and brooks, meaning all-year-round flowing waters of first order or higher, as shown on the current version of the U.S. Geological Survey 7 ½' topographic maps and the Milton Wetlands Maps. Public waters include but are not limited to:
 - (a). **Lakes/Ponds:** Allan Hasting Way Pond, Willey Pond, Gould Pond, Milton Pond, Depot Pond, Northeast Pond, Spaulding Pond, Sunrise Lake and Town House Pond.
 - (b). **Rivers/Streams:** Branch River, Dames Brook, Great Brook, Hart Brook, Jones Brook, Lyman Brook, Miller Brook, Salmon Falls River and Teneriffe Mountain Stream.
 4. **Reference Line-** For natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by the Division of Water Resources. For artificially impounded freshwater bodies, the waterline at full pond as determined by the elevation of the top of the impoundment structure. For rivers, streams and brooks, the ordinary high water mark.

5. **Shoreland Frontage** - The average of the distances measured along the public boundary and along a straight line drawn between the points at which the public boundary intersects the sidelines of the property.
6. **Shrub** - Multi-stemmed woody plant, which normally grows to a mature height of less than 20-feet.
7. **Water Dependent Structure** - Dock, wharf, pier, breakwater, or other similar structure or any part thereof built over, on, or in the waters of the Town.

D. SHORELAND PROTECTION OVERLAY DISTRICT - The Shoreland Protection Overlay District is an overlay, which is superimposed over the conventional existing zoning and includes within its boundary the protected shoreland adjacent to all waters within the municipality which encompasses all land within 250-feet of the public boundary line of the waters.

E. PERMITTED USES -

1. Water Dependent Uses and Structures - The following uses and structures are permitted within the Shoreland Protection Overlay District in compliance with all applicable local, State, and Federal regulations.

(a) Water dependent structures including, but not limited to, docks, wharfs, swimming floats and boat ramps. Other water dependent uses and structures upon issuance of a conditional use permit approved by the Planning Board per Innovative Land Use Controls, RSA 674:21 and after recommendations from the Conservation Commission, provided the proposal complies with the general conditional use permit criteria and also complies with the following criteria:

- (1) The use would be in keeping with the purpose and intent of these regulations;
- (2) The least impacting route and methodology for the use have been selected and represent the best practicable alternative; canopies and seasonal covers shall extend only over the boat slips and shall be removed during the non-boating season.

F. PROHIBITED USES - The following uses are prohibited in the Shoreland Protection Overlay District:

1. Establishment or expansion of an automobile junkyard, solid or hazardous waste facilities;
2. Use of fertilizer, except lime and/or wood ash;
3. Bulk storage of chemicals;
4. Bulk storage of petroleum products or hazardous materials;
5. Processing of excavated materials;
6. Dumping or disposal of snow and ice collected from roadways or parking areas within 400-feet of a community well or planned community water.

G. RESTRICTED USES - The following uses may be conducted within the Shoreland Protection Overlay District only in accordance with the conditions listed herein:

1. Construction of water dependent structures shall be constructed only as approved by the State Wetlands Board pursuant to RSA 482-A.
2. Public water supply facilities as permitted by the Department of Environmental Services (DES).
3. Public water and sewage treatment facilities as permitted by DES.

4. Hydro-electric facilities, including, but not limited to dams, dikes, penstocks, and powerhouses, shall be recognized as water dependent, as permitted by DES.
5. Public utility lines and associated structure and facilities as permitted by DES.
6. An existing solid waste facility, which is located within 250-feet of the public boundary line of protected waters under this chapter may continue to operate under an existing permit, provided it does not cause degradation to an area in excess of that area under DES permit.
7. No solid waste facility shall place solid waste within 250-feet of the reference line of protected waters under this chapter except as expressly permitted under RSA 483-B: 9, IV-c.
8. All new and existing excavations within the Protected Shoreland Protection District shall be designed and constructed in accordance with rules adopted by the department under RSA 541-A for terrain alternations under RSA 485:17, to manage stormwater control and sediment, during and after construction.

However, any solid waste facility may be allowed, subject to permitting conditions under RSA 149-M: 9, to erect accessory structures and conduct other activities consistent with the operation of the facility within 250-feet of the reference line of protected waters under this Ordinance, such as filling, grading, and installing monitoring wells and other drainage structures as is consistent with its solid waste permit as issued by the Department of Environmental Services. Under no circumstances shall the toe of any slope encroach within 150-feet of the reference line.

H. MINIMUM LOT REQUIREMENTS:

1. The minimum lot size for new lots in areas dependent on on-site septic systems shall be determined by all soil type using the model developed by the Ad Hoc Committee for Soil Based Lot Size for the DES.
2. New lots requiring on-site water and sewage systems within this Overlay District shall have a minimum of shoreland frontage of 150-feet.
3. Lots with shoreland frontage, which are serviced by municipal sewers, shall meet the area and width requirements of the underlying Overlay District or minimum size requirements of the Zoning Ordinance
4. Setback - No primary structure shall be located within 50-feet of the public boundary. Accessory structures such as storage sheds and gazebos but excluding automobile garages may be located within the 50-foot setback upon issuance of a conditional use permit by the Planning Board, after recommendations from the Conservation Commission, provided the proposal complies with the general conditional use criteria and also complies with the following criteria:
 - (a) The location and construction of the structure is consistent with the intent of the Ordinance to maintain a vegetated buffer;
 - (b) The structure is required as a shelter either for humans, equipment, or firewood;
 - (c) The structure is usually customary and incidental to a legally authorized use located within the Shoreland District.
5. Building Height - No structure within the Shoreland Overlay District shall exceed 2 ½ stories or 35-feet in height as measured from the average ground level around the structure to the highest point on the roof excluding chimneys.
6. Building Placement - Buildings should be placed in such a manner as to minimize impact on habitat and at such a location as to have the least impact on the watershed.
7. Parcel coverage by impervious cover shall not exceed 20-percent.

I. DEVELOPMENT STANDARDS:

1. Natural Woodlands Buffer:

- (a) Where existing, a natural woodland buffer shall be maintained within 150-feet of the reference line, the purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and under story, preserving fish, bird and wildlife habitat, and respecting the overall natural condition of the protected shoreland.
- (b) Within the natural shoreland buffer of the protected shoreland under conditions defined in RSA 483-B: 9, V the following shall apply:
 - (1) Not more than a maximum of 50-percent of the basal area of trees, and a maximum of 50-percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place. Replacement planting with native or naturalized species may be permitted to maintain the 50-percent level.
 - (2) Trees, saplings, shrubs and ground covers that are removed to clear an opening for building construction, accessory structures, septic systems, roadways, pathways, and parking areas shall be excluded when computing the percentage limitations under section I-1-(b)(1).
 - (3) Dead, diseased, unsafe, noxious or fallen trees, saplings, shrubs, or ground cover may be removed. Their removal shall not be used in computing the percentage limitations under section I-1-(b)(1). Stumps and their root systems which are located within 50-feet of the reference line shall be left intact in the ground. Dead and living trees that provide dens and nesting places for wildlife are encouraged to be preserved. Plantings of natural native vegetation that are beneficial to wildlife are encouraged to be undertaken.

2. Subsurface Waste Disposal Systems:

- (a). Pursuant to RSA 483-B:9, V(b), all new lots, including those in excess of 5-acres, created within the protected shoreland are subject to subdivision approval by the department of environmental services under RSA 485-A:29.
- (b). All subsurface waste disposal systems must be designed and installed in accordance with the DES, Division of Water Supply and Pollution Control publications; Subdivision and Individual Sewage Disposal System Design Rules.
- (c). Septic tanks and leach fields adjacent to ponds, lakes, streams, brooks, rivers, and open areas shall be set back from the public boundary at least the following distances based on information contained in the Order 1-soil map or High Intensity Soil (HIS) map prepared by a certified Soil Scientist.
 - (1) 125-feet where the soils map indicates the presence of porous sand and gravel materials with a permeability faster than 2-minutes per inch;
 - (2) 100-feet where the soils map indicates the presence of soils with restrictive layers within 18-inches of the natural soil surface;
 - (3) 75-feet where the soils map indicates the presence of all other types of soils.

A minimum of one extra percolation test midway between the septic system and the reference line shall be performed by a Soil Scientist to determine the presence of excessively drained sand and gravel materials, and a minimum of 2-test pits, (one down slope from the septic system 35-feet, and one down slope from the septic system 75-feet) shall be dug and witnessed by a permitted subsurface disposal system designer to determine if restrictive layers exist within 18-inches of the natural soil surface.

3. Erosion And Sediment Control:

- (a) All construction and/or development activities shall incorporate design standards for erosion and sedimentation control which at a minimum reflect the recommendations of the publication Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, prepared by the Rockingham County Conservation District for the DES in cooperation with the USDA Soil Conservation Service, August 1992.
- (b) Disturbance of a contiguous area in excess of 50,000-square feet requires a permit from the DES pursuant to RSA 485-A: 17 (I).
- (c) The Towns' Model Stormwater Erosion Control Regulation listed in the Site Plan Regulation and Federal EPA rules also apply.

4. Cluster Or Open Space Developments - The grouping of residential units on a parcel within the Shoreland Overlay District is permitted and encouraged to the extent that valuable shoreland resources and open spaces are retained. Such developments should meet the following provisions:

- (a) Densities should not exceed those permitted under the soil based lot size density plus a bonus of 2-percent, which recognizes the open space advantages of clustering.
- (b) A minimum of 60-percent of the total parcel shall remain as permanent open space, which shall be in a conservation easement in perpetuity.
- (c) Parcel coverage by impervious cover including building footprint, impervious roadway, or other impervious cover shall not exceed 20-percent of the parcel.

5. Leach Field Setbacks - All leach fields shall meet the setback requirements of this Overlay District. In the event that the leach field cannot physically be located on the lot in conformity with this Ordinance the owner shall be required to acquire additional land or a permanent easement to such land for this purpose in so far as practicable. Should additional undeveloped land not be available, allowable sewage loading shall be reduced by decreasing the number of bedrooms, toilet facilities, and other wastewater generating facilities to bring the proposed development as close to compliance with this Ordinance as feasible.

6. Common Owners or Users of Water Front Parcels or Lots - Shorefront lots/parcels which are intended for use for common access by the non-shoreland property owners within the development or subdivision which owns or has control over the common land, shall:

- (a) Contain a minimum of one acre;
- (b) Have a minimum shoreland frontage of 150-feet for the first ten residential units and an additional ten feet for each additional unit;
- (c) Have no structures other than toilet facilities, picnic shelters and/or recreational facilities. Necessary leach fields shall be located at least:
 - (1) 125-feet where the soils map indicates the presence of porous sand and gravel materials with a permeability faster than 2-minutes per inch;
 - (2) 100-feet where the soils map indicates the presence of soils with restrictive layers within 18-inches of the natural soil surface;
 - (3) 75-feet where the soils map indicates the presence of all other types of soils.

- (d). Half the shoreland frontage shall be designated for swimming and shall be separated from boating areas by ropes and appropriate marks, subject to the approval of the Safety Services Division of the NH Department of Safety.
- (e). Off street parking shall be provided on the basis of 300-square feet for each residential unit located ¼ mile or more from the common area, which has use of the area.
- (f). Toilet facilities shall be provided on the basis of one facility each for men and women for each 25-residential units.
- (g). Impervious cover for roof area, parking lots, access roads, sidewalks and any other similar cover over or on the parcel or lot shall not exceed 10-percent of the area of the parcel or lot.

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

J. Conditional Use Permit: The Planning Board, after a public hearing, may issue a conditional use permit for Section E-1 and Section H-4.

K. CONFLICTS OF ORDINANCE - In the event that the requirements of this Ordinance differ from another federal, state or local statute, ordinance or regulation, the more stringent requirement shall apply. In the event that the requirements within this Ordinance are in conflict with one another, the more stringent requirement shall apply.

RESERVED FOR THE SHORELAND PROTECTION OVERLAY DISTRICT MAP

ARTICLE XVIII
TRANSFER OF DEVELOPMENT RIGHTS
(Adopted 3/14/07)

- A. Authority.** By the authority granted under NH RSA 674:21, this section creates overlay district(s) for the purpose of transferring development rights (TDR) within said districts.
- B. Purpose and Intent.** Within the Town of Milton there are certain lands that possess highly valued, significant conservation features, including but not limited to wetlands, groundwater recharge zones, forested areas, wildlife habitat, farmland, scenic view sheds, historic landmarks, and linkages to other such areas. Because of their singular and distinctive assemblages of flora and fauna and their significant contribution to the ecological system and/or the cultural identity of our community, these lands are worthy of permanent protection. The Town of Milton furthermore, has a limited supply of land suitable for development. The purpose of this overlay district is to promote intensive development on the developable land possessing the least conservation value and to permanently protect lands possessing significant and noteworthy conservation features that provide unique values in their undisturbed condition.
- C. Applicability.** Upon request by an applicant for subdivision or site plan approval and at the discretion of the Planning Board, the provisions of this subsection may apply to the district(s) defined in this subsection E below.
- D. Definitions.** The terms contained within this section shall have their meaning as defined herein in the context of the Town of Milton Zoning Ordinance or as defined in NH RSA's. In any dispute of interpretation, the more restrictive definition consistent with Section B. above shall apply.

Development Rights - The legal claim to construct or develop specified land uses within specified densities and/or dimensional limits as granted by the Town of Milton Zoning Ordinance.

Landscaped Area - An area unoccupied by pavement or structures and open to the sky in either a landscaped or grassed condition. May include recreational fields, lawns, and public parks that do not possess significant conservation features.

Open Space – Land that is not built upon or substantially altered by human activity including open fields, such as meadows and farmland, and forest as well as undeveloped shorelands and waterbodies. Lands so transferred shall not be further altered or degraded.

Sending Area - A defined area within a TDR district from which development rights are transferred, resulting in the permanent preservation of lands possessing significant conservation features (shall include natural and built features).

Receiving Area - A defined area within a TDR district to which development rights are transferred resulting in more efficient and intense use of suitable development sites.

Transfer of Development Rights - The conveyance of the development rights of a parcel of land by deed or other legal instrument approved by the Planning Board to the developer of another parcel. Said legal instrument shall be recorded at the Strafford County Registry of Deeds.

TDR District - An area defined as a zoning overlay district, which includes a sending area and a receiving area for the purpose of transferring development rights from a parcel within the sending area to a parcel within the receiving area.

E. Districts Defined.

1. The Industrial TDR District is hereby determined to be any Industrial-Commercial and Low Density Residential Zoning district as shown on the Zoning Map for the Town of Milton, New Hampshire, adopted date, March 2006. The sending area is defined to be open space and related setbacks as defined by the Town of Milton Wetland Protection District, which are located in any Low Density Residential Zoning district. The receiving area is defined to be all remaining land in any Industrial-Commercial Zoning district.
2. The Residential TDR District is hereby determined to be any Commercial-Residential and Low Density Residential district as shown on the Zoning Map for the Town of Milton, New Hampshire, adopted date, March 2006. The sending area is defined to be all Low Density Residential zoning districts. The receiving area is defined to be all Commercial-Residential zoning districts east of the Spaulding Turnpike which allow residential development.

F. Procedural Requirements.

1. At the discretion of the Planning Board, an applicant for subdivision or site plan approval within the receiving area of the defined TDR district may apply the performance standards specified in subsection G and H below in return for the acquisition of land or development rights from the sending area within the same TDR district. The performance standards for the Industrial TDR district are outlined in subsection H below. The performance standards for the Residential TDR district are outlined in subsection G below.
2. A certified boundary survey of the associated land in the sending area shall be submitted as a supplement to the site plan or subdivision plan for development within the receiving area.
3. The owner of the subject open space within the sending area of the TDR district shall sign all application materials as a co-applicant of the subdivision or site plan application.
4. A sketch plan estimating layout of the development site and identifying the open space associated with the plan shall be submitted to the Planning Board for review at a regularly scheduled meeting. The Planning Board, within thirty (30) days of its review of the sketch plan, shall determine if waivers will be granted as allowed in Subsections G and H below. Following this decision, a final application will be prepared. The final application for development approval shall be reviewed in accordance with the standard plan review process and subjected to all applicable development regulations, except as provided in this section.
5. A perpetual easement or restrictive covenant shall be recorded at the Strafford County Registry of Deeds that preserves the designated open space within the sending area. Said easement or covenant may allow for the continuance of existing residential, agricultural and silvacultural activities, and may allow for utility and access crossings in accordance with subsection I below. The designation of the land protection agency to hold the easement shall be approved by the Planning Board.

G. Industrial Performance Standards.

1. Land within a sending area, when surveyed, approved by the Planning Board and preserved by easement or covenant as specified in subsection F above, may be counted for the open space requirement for a development site in a receiving area. The amount of land preserved in a sending area shall equal or exceed the open space requirement for the development site, but in

no case be less than two (2) acres. Additionally, development sites within the Industrial-Commercial zoning districts shall maintain open space or landscaped area on at least ten (10) percent of the site. The design of the development site shall locate the open space or landscaped area to maximize the aesthetic value of the site.

2. The minimum lot size requirement in the underlying zoning district may be waived by the Planning Board for land subjected to the transfer of development rights.
3. The minimum frontage requirement may be waived by the Planning Board for land subjected to the transfer of development rights provided that paved access to all developed areas suitable for emergency vehicles is approved by the Planning Board.
4. Setbacks for parking, paved areas, and buildings may be waived by the Planning Board, and be consistent with the intent to promote intensive development of suitable development sites. In addition, buildings shall be at least 150 feet from residential structures that exist on the date of enactment of this Chapter, and 75 feet from the lot line of a disagreeing residential abutter.
5. The developer shall record Planning Board approved covenants that address architectural considerations for structures, signage and lighting, that are designed to promote the highest possible aesthetic quality of the development site.
6. A landscaping plan shall be submitted with a subdivision or site plan application that depicts landscaping or open space around the perimeter of the site, near the proposed buildings, and within the parking lot that promotes the highest possible aesthetic quality of the development.

H. Residential Performance Standards.

1. For land in the sending district to be eligible to transfer development rights, it must be a parcel of at least 5 acres, and developable under the existing land use regulations.
2. Land within a sending area, when surveyed, approved by the Planning Board and preserved by easement or covenant as specified in subsection F above, may be counted for the minimum lot size requirement for a development site in a receiving area. The amount of land preserved in a sending area shall equal or exceed the minimum lot size requirement for the sending site.
3. The square footage being transferred shall be divided by the minimum lot size needed in the receiving area, or by 5000 square feet, whichever is larger to determine the transferred right.
4. The minimum lot size requirement in the underlying zoning district may be waived by the Planning Board for land subjected to the transfer of development rights.
5. The minimum frontage requirement may be waived by the Planning Board for land subjected to the transfer of development rights provided that paved access to all developed areas suitable for emergency vehicles is approved by the Planning Board.
6. Notwithstanding any other provision in this chapter to the contrary, the density or intensity of development of a receiving parcel may be increased by the transfer of development rights so long as the increase in density or intensity:
 - (a) Is consistent with the Master Plan
 - (b) Is not incompatible with the land uses on neighboring lots

I. Conditional Uses. The Planning Board may grant conditional use permits to allow streets, roads, utilities, or other infrastructure improvements to cross wetlands within the receiving area of the TDR District provided said infrastructure is essential to the productive use of land within the receiving area of a TDR District, and further provided that no possible location exists for said infrastructure in non-wetland areas.

ARTICLE XVIII
IMPACT FEE ORDINANCE
(Adopted 3/14/07)

A. PURPOSE

The following ordinance shall govern the assessment of impact fees for public capital facilities in order to accommodate increased demand on the capacity of these facilities due to new development. This ordinance is authorized by RSA 674:16 and 674:21, V, as an innovative land use control to: promote public health, safety, convenience, welfare, and prosperity; insure that adequate and appropriate public facilities are available; and provide for the harmonious development of the Town and its environs.

B. FINDINGS

In review of the impact of growth relative to the existing and planned capital facility capacity available to the Town of Milton for its capital facilities needs, the Town of Milton hereby finds that:

1. As documented by the Master Plan and the Capital Improvements Program of the Town of Milton, recent and anticipated growth rates in public enrollment and associated improvements and costs would necessitate an excessive expenditure of public funds in order to maintain adequate capital facility standards and to promote and protect the public health, safety, and welfare.
2. The imposition of impact fees is one of the methods available to ensure that public expenditures are not excessive and that new development will bear a proportionate share of the capital costs necessary to accommodate such development.
3. An impact fee ordinance for public capital facilities is consistent with the goals and objectives of the Master Plan and the Capital Improvements Program of the Town of Milton.

C. AUTHORITY

1. Impact fees may be assessed to new development to compensate the Town of Milton for the proportional share of capital facilities generated by new development in the Town of Milton. Any person who seeks a building permit for new development may be required to pay an impact fee in the manner set forth herein.
2. Public capital facilities have been and will be provided by the Town utilizing funds allocated through the Capital Improvements Program, which has been reviewed by the Planning Board and adopted and regularly updated by the Board of Selectmen.
3. The Planning Board may, as a condition of approval of any subdivision, site plan, or change of use, and when consistent with applicable Board regulations, require an applicant to pay an impact fee for the applicant's proportional share of off-site improvements to public facilities affected by the development.
4. Nothing in this section shall be construed to limit the existing authority of the Planning Board, in accordance with RSA 674:36.11(a) and the regulations of the Board, to disapprove proposed development which is scattered or premature or which would require an excessive expenditure of public funds, or which would otherwise violate applicable ordinances and regulations. Nothing in this section shall be construed to limit the Planning Board's authority to require off-site work to be performed by the applicant, in lieu of paying an impact fee, or the Board's

authority to impose other types of conditions of approval. Nothing in this section shall be construed to affect types of fees governed by other statutes, ordinances or regulations.

D. DEFINITIONS

For the purposes of this chapter, the following terms shall have the meanings indicated:

1. **Capital Facilities** – Facilities and associated structures, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood controls facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; public safety facilities solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreational facilities not including public open space.
2. **Gross Floor Area** – The sum of the areas of all floors of main and accessory buildings on the property as measured to the outside surfaces of the exterior walls. The gross floor area shall include basements, lobbies, and stair openings, porches, balconies and open-sided roofed-over areas, elevator shafts and storage. The gross floor area shall exclude open wells (atriums), mechanical rooms, crawl spaces and attics without floors, attics used only for mechanical services.
3. **Impact Fee** – A fee or assessment imposed upon development, including subdivision and site plan review, building construction or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the Town of Milton, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreational facilities not including public open space.
4. **New Development** - An activity that results in:
 - (a) creation of a new dwelling unit or units; or
 - (b) conversion of a legally existing use, or additions thereto, which would result in a net increase in the number of dwelling units or number of bedrooms; or
 - (c) construction resulting in a new non-residential building or a net increase in the gross floor area of any non-residential building; or
 - (d) conversion of an existing use to another use if such change creates a net increase in the demand on public capital facilities that are the subject of impact fee assessments. New development shall not include the replacement of an existing mobile home, or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in its gross floor area, density or type of use, and where there is no net increase in demand on public capital facilities.
 - (e) A new or modified service connection to the public water system or the public wastewater disposal system of the Town that would result in a net increase in demand on the capacity of these facilities.

E. ASSESSMENT METHODOLOGY

1. **Computation:** Prior to assessing an impact fee required by the Planning Board for one or more of the public capital facilities listed above, the Planning Board shall adopt such studies or methodologies and related fee schedules that provide for a process or method of calculating the proportionate share of capital improvement costs that are attributable to new development. Such calculations shall reasonably reflect the capital cost associated with the increased demand placed on capital facility capacity by new development.
2. **Proportionality:** The amount of the impact fee shall be calculated by the Planning Board to be a proportional share of municipal capital improvement costs that are reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee.
3. **Conversion or Modification of Use:** In the case of new development created by conversion or modification of an existing use, the impact fee shall be based upon the net increase in the impact fee assessed for the new use as compared to the highest impact fee that was or would have been assessed for the previous use in existence on or after the effective date of this ordinance.
4. **Existing Deficiencies:** Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

F. ADMINISTRATION

1. Accounting

(a) In accordance with RSA 673:16, II and RSA 674:21, V(c), impact fees shall be accounted for separately, shall be segregated from the Town's general fund, may be spent upon order of the Board of Selectmen, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fee was collected to meet.

(b) In the event that bonds or similar debt instruments have been or will be issued by the Town of Milton or the Milton School District for the funding of capital improvements that are the subject of impact fee assessment, impact fees from the appropriate related capital facility impact fee accounts may be applied to pay debt service on such bonds or similar debt instruments.

(c) The Town Treasurer shall record all fees paid, by date of payment and the name of the person making payment, and shall maintain an updated record of the current ownership, tax map and lot reference number of properties for which fees have been paid under this Ordinance, for each building permit so affected for a period of at least nine (9) years from the date of receipt of the impact fee payment associated with the issuance of each permit.

(d) Impact fees collected may be spent from time to time by order of the Board of Selectmen and shall be used solely for the reimbursement of the Town and the School District for the cost of public capital improvements for which they were collected, or to recoup the cost of capital improvements made by the Town or District in anticipation of the needs for which the impact fee was collected.

(e) In the event that bonds or similar debt instruments have been, or will be, issued by the Town or the District for the funding of capacity-related facility improvements, impact fees may be transferred to pay debt service on such bonds or similar debt instruments.

(f) At the end of each fiscal year, the Town Treasurer shall make a report to the Board of Selectmen, giving a particular account of all impact fee transactions during the year.

2. **Assessment:** All impact fees imposed pursuant to this section shall be assessed at the time of planning board approval of a subdivision, site plan or change of use as per the Planning Board approved Schedule of Fees. When no planning board approval is required, or has been made prior to adoption or amendment of this ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development as determined by the Board of Selectmen.
3. **Security:** In the interim between assessment and collection, the Board of Selectmen may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable measures of security so as to guarantee future payment of assessed impact fees.
4. **Collection:** Impact fees shall be collected as a condition for the issuance of a certificate of occupancy. If no certificate of occupancy is required, impact fees shall be collected when the development is ready for its intended use. The collection of impact fees shall be the responsibility of the Board of Selectmen. In projects where off-site improvements are to be constructed simultaneously with a project's development, and where the Town has appropriated the necessary funds to cover such portions of the work for which it will be responsible, the Town may advance the time of collection of the impact fee to the issuance of a building permit. Nothing in this section shall prevent the Board of Selectmen, with the review by the Planning Board, and the assessed party from establishing an alternate, mutually acceptable schedule of payment.
5. **Refund of Fees Paid:** The current owner of record of property for which an impact fee has been paid shall be entitled to a refund of that fee, plus accrued interest under the following circumstances:
 - (a) When either the full or partial portion of the impact fee, whichever is applicable, has not been encumbered or legally bound to be spent for the purpose for which it was collected within a period of six (6) years from the date of the full and final payment of the fee; or
 - (b) When the Town of Milton, or in the case of school impact fees, the Milton School District, has failed, within the period of six (6) years from the date of the full and final payment of such fee, to appropriate their proportionate non-impact fee share of related capital improvement costs.

G. APPEALS

A party aggrieved by a decision made by the Building Inspector regarding the assessment or collection of impact fees authorized by this Section may appeal such decision to the Planning Board. In accord with RSA 676:5, III, appeals of the decision of the Planning Board in administering this ordinance may be made to Superior Court, as provided in RSA 676:5, III and RSA 677:15, as amended.

H. WAIVERS

The Planning Board may grant full or partial waivers of impact fees where the Board finds that one or more of the following criteria are met with respect to the particular public capital facilities for which impact fees are normally assessed.

- (a) An applicant may request a full or partial waiver of school impact fees for those residential units that are lawfully restricted to occupancy by senior citizens age 62 or over in a development that is also maintained in compliance with the provisions of RSA 354-A: 15, Housing For Older Persons. The Planning Board may waive school impact fee assessments on such age-restricted units where it finds that the property will be bound by lawful deeded

restrictions on occupancy by senior citizens age 62 or over for a period of at least 20 years. Upon expiration of the specified waiver period, any proposed change in use or conversion of residential units from age-restricted occupancy, may be subject to assessment of impact fees.

- (b) A person may request a full or partial waiver of impact fees for construction within a subdivision or site plan approved by the Planning Board prior to the effective date of this ordinance. Prior to granting such a waiver, the Planning Board must find that the proposed construction is entitled to the four year exemption provided by RSA 674:39, pursuant to that statute. This waiver shall not be applicable to phases of a phased development project where active and substantial development, building and construction has not yet occurred in the phase in which construction is proposed.
- (c) The Planning Board may agree to waive all or part of an impact fee assessment and accept in lieu of a cash payment, a proposed contribution of real property or facility improvements of equivalent value and utility to the public. Prior to acting on a request for a waiver of impact fees under this provision that would involve a contribution of real property or the construction of capital facilities, the Planning Board shall submit a copy of the waiver request to the Town Council for its review and consent and hold a public hearing prior to its acceptance of the proposed contribution. The value of contributions or improvements shall be credited only toward facilities of like kind, and may not be credited to other categories of impact fee assessment. The applicant shall pay all costs incurred by the Town for the review of such proposal, including consultant and counsel fees.

I. ADDITIONAL ASSESSMENTS

Payment of the impact fee under this article does not restrict the Town or the Planning Board from requiring other payments from an applicant, including such payments relating to the cost of the extensions of water and sewer mains or the construction of roads or streets or other infrastructure and public capital facilities specifically benefiting the development as required by the subdivision or site plan review regulations, or as otherwise authorized by law.

ARTICLE XX
SIGN ORDINANCE
(Adopted 3/13/12)

1. Purpose: Signs perform important functions that are essential for public safety and general welfare, including communicating messages, providing information about goods and services, and orienting and directing people. The purpose of the Milton Sign Ordinance is to:

- a) Promote the public, health, welfare and safety by regulating existing and proposed outdoor advertising and outdoor signs of all types;
- b) Protect property values;
- c) Enhance and protect the physical appearance of the Town of Milton;
- d) Preserve the Town's scenic and natural beauty;
- e) Prevent hazards to vehicular and pedestrian traffic safety by controlling the number, location, and placement of signs;
- f) Provide easy recognition and legibility of permitted signs and uses and promote visual order and clarity on streets;
- g) Support business and community vitality through informing the public of available goods, services, and activities; and
- h) Provide the Planning Board with discretion and flexibility when reviewing sign permit applications for businesses that serve the traveling public, national retail chains, high value businesses and the like.

2. Sign permit required.

No sign shall be placed, erected, moved, replaced, or reconstructed without a permit unless specifically exempted in this section. Such permit shall be issued by the Code Enforcement Officer provided the sign meets all the requirements of this section. Applications for a sign permit shall be made to the Code Enforcement Officer on the form provided by him and shall include a set of plans (to scale), showing site location, sign size, colors, the design, type, and size of lettering, method of illumination, (if any), and the type of materials to be used in construction and the required fee. The Code Enforcement Officer shall record the plans in the CEO office prior to the issuance of the permit.

3. Allowed without a sign permit. The following signs are allowed in all zoning districts without a sign permit:

- a) One (1) temporary nonilluminated sign no greater than nine (9) square feet in area advertising the sale, rent or lease of the premises.
- b) Political signs as regulated by NH RSA 664.
- c) Temporary nonilluminated signs pertaining to yard, garage, and similar special sales or events. These signs shall only be displayed while such sale or special event is actively in progress.

- d) Directional signs indicating entrance and exit driveways, parking regulations and signs deemed essential to protect the public health, safety and welfare. Such signs shall be no larger than four (4) square feet.
- e) Temporary signs and decorations displayed as part of the celebration of holidays, or national, state or local citywide events or festivals.
- f) Temporary special promotional signs for public, institutional, cultural, or civic events occurring within or relative to the Town of Milton.
- g) Bulletin or announcement boards not exceeding thirty-two (32) square feet in total area on the premises of schools, churches or other public facilities.
- h) One (1) temporary sign not exceeding thirty-two (32) square feet on a building or project under construction identifying the architect, owner, and/or contractor.
- i) One (1) directory sign of the principal occupants of a building may be affixed to the exterior wall at each entrance to the building. Such directory shall not exceed one (1) square foot for each occupant.
- j) One (1) sign not exceeding two (2) square feet identifying the name and/or address of the occupant.
- k) One (1) temporary non-illuminated sign not exceeding thirty-two (32) square feet advertising the sale, rent, lease of an existing commercial or industrial use or land located in the Industrial Commercial (IC) zone.
- l) One (1) off premise directional signs indicating the general location of a business. Such signs shall be no larger than four (4) square feet. One such sign per business is allowed.

4. Signs allowed only by permit. A permit shall be required for signs in the following zoning districts:

- a) In the HDR zoning district, one (1) exterior affixed, hanging or freestanding sign not exceeding four (4) square feet in area identifying a permitted use.
- b) In the LDR zoning district one (1) exterior affixed, hanging, or freestanding sign not exceeding thirty two (32) square feet in area identifying a permitted use except that signs for home occupations shall be limited to four (4) square feet in area.
- c) In the CR and IC zoning districts, exterior affixed signs shall not exceed thirty two (32) square feet. For every 25 feet of additional setback, the square footage of the sign can be increased by three (3) square feet. One (1) hanging sign on each frontage provided that such sign has no more than two (2) faces and projects no more than eight (8) feet from the building face. Hanging signs shall not exceed thirty two (32) square feet in area.
- d) Freestanding or ground signs subject to the following conditions:
 - 1. Signs shall not exceed sixteen (16) feet in height nor obscure vision for traffic movement.
 - 2. The area of a sign area shall not exceed thirty two (32) square feet.

3. One (1) freestanding sign allowed per lot.

e) A business in the CR and IC zoning districts shall be allowed either a one (1) affixed sign or one (1) hanging sign.

5. Planning Board Review.

For businesses such as those serving the traveling public, national retail chains, high value businesses and the like, the Planning Board shall have the authority to allow an increase in the square footage of signs in the CR and IC zoning districts up to a maximum of 250 square feet and to make other appropriate modifications regarding signage requirements. In making its determination, the Planning Board shall consider the abutting land uses, the visual impact, the site location and the signage requirements of the business given its location and size.

6. General Provisions

- a) Two-faced signs shall be considered as a single unit, and only one surface shall be considered in determining the area.
- b) The material and construction of any sign shall be in accordance with the building code and other Town requirements. All signs shall be maintained in a safe condition and, in good repair.
- c) Except for directional signs, off-premise signs advertising a business are not allowed.
- d) Internally illuminated, flashing signs and scrolling signs are not permitted.
- e) Signs shall conform to all dimensional requirements of the Milton Zoning Ordinance.

7. Definitions

- a. Internally illuminated sign: A sign that is lighted by a source concealed behind a translucent sign panel.
- b. Sign: Any device, fixture, placard, or structure that uses color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public.
- c. Sign Area: The area of the smallest rectangle or circle within which the entire sign can fit and which excludes structural supports which do not contribute through shape, color, or otherwise to the sign's message. Any separate surface, board, frame or shape on or within which the sign is displayed shall be included. The height of a sign shall be measured to the highest point of the sign, including any structural or ornamental projections above the sign proper, from the average ground level above which the sign is located.
- d. Temporary signs: Signs of a temporary nature such as political posters, signs giving notice of a non-profit or charitable event or function, notice of a public or non-profit type of meeting, yard sales, a real estate sign, construction sign identifying a project, a sign announcing a new business or a relocated business provided the sign is less than eight (8) square feet. Temporary signs shall not be placed on fences, trees, utility poles or the like or a place that will obstruct or impair the vision of traffic or create a hazard or nuisance. Temporary signs shall be removed within ten (10) days of the event or function.

8. Violations

Any violation of this sign ordinance shall be subject to fines or penalties as indicated in Article IX Penalties of the Milton Zoning Ordinance.

RESERVED FOR ZONING MAP