

**Proposal to Amend Madbury  
Zoning Ordinances, Article IX-A  
Wellhead and Aquifer Overlay District**  
(January 18<sup>th</sup>, 2021)

**Proposed Amendment Will Appear On The March 9<sup>th</sup> 2021 Ballot As:**

Article 2: To vote to amend Town Zoning Ordinances:

Are you in favor of the adoption of the amendment to the existing Town Zoning Ordinance, Article IX-A (Aquifer and Wellhead Protection Overlay District) as proposed by the Planning Board? The amendment will (1) clarify language and organization, (2) correct a legally questionable rule that could deny owners near public wells reasonable use of their property without compensation, and (3) limit and regulate land uses within 400 feet of a public water supply wellhead to protect water quality. Recommended by the Planning Board (majority vote required).

**Background:**

This amendment was approved for submission to the voters by the Planning Board during a Public Hearing on January 6<sup>th</sup>, 2021. Its purpose is to improve the Town's ordinance and further the protection of water resources in Madbury.

**What Does The Amendment Do:**

It clarifies the overall language and organization of the ordinance making it easier to understand and implement.

It corrects a legally questionable rule that could result in "Regulatory Taking." The problem rests in the size of Section 6's "no-development" area around public water supply wells which often extends past the well owner's land and deeply onto nearby property. The amendment corrects this by updating Section 6 to use established state protective radii rules. These rules are based on the size of the individual well and are more appropriate for the small public water wells in Town. This update will allow Madbury to more effectively enforce the ordinance and protect water.

It maintains significant protection within 400 feet of a public water supply well by establishing that this area is an integral part of the Wellhead and Aquifer District that will be regulated under this ordinance. This will limit land uses near wellheads to keep sources of contamination well away from public water wells.

**What Does the Amendment Not Do:**

The amendment does not change rules for residential wells or allow for any increase in density of development.

It also does not add to, or delete from, the existing ordinance's Permitted, Prohibited, or Conditional Uses, or Exemptions.

**Proposal to Amend Madbury  
Zoning Ordinances, Article IX-A  
Wellhead and Aquifer Overlay District**  
(January 18<sup>th</sup>, 2021)

**Summary of proposed changes:**

Minor format changes, such as paragraph numbering and titling, are not listed below.

**Sections 1 and 2:**

No changes

**Section 3:**

**Paragraphs A and B:** Text and reference updates made to clarify and better organize the sources of district boundaries.

**Paragraph A.3:** Paragraph added for better organization. Paragraph establishes that land within a 400-foot radius of a Public Water System well is in this overlay district ensuring that land use restrictions that protect wells from sources of contamination apply to this area around public water supply wells. This listing was previously in Section 6.

**Section 4:**

**Old Paragraph B:** Paragraph was deleted to eliminate redundant language.

**Paragraphs A and B:** Style changes made to clarify remaining language.

**Section 5:**

**Paragraph A:** Paragraph was restructured to align with other proposed changes.

**Paragraph B.1:** Reference to hazardous waste facilities was removed since the State's regulation program preempts municipal hazardous waste legislation in New Hampshire.

**Paragraph B.7 (Old B.8):** Text updated to clarify that only commercial motor vehicle service or repair shops are prohibited.

**Paragraph C:** Retitled for clarity

**Paragraph C.1:** Updated the quantities of regulated substances at which a permit and spill prevention plan are required in order to align with Federal hazardous materials emergency response guidance. Change from 100 to 55 gallons and from 800 to 660 pounds.

**Paragraph C.2:** Eliminated redundant language.

**Paragraph D:** Paragraph added to consolidate where exemptions are listed in the ordinance. Items in the paragraph were previously in Section 5 Paragraph A and Section 6.

**Section 6.**

Changes to this section correct legally dubious rules in the existing ordinance that could result in property owners near public wellheads being denied reasonable use of their property, and drive legal action against the Town and property owners. The changes continue to provide strong protection for public water supplies while also providing an appropriate legal basis for needed restrictions on land use by:

- (1) Incorporating the existing ordinance's 400-foot radius into Article IX-A's defined boundaries (see the explanation of Section 3 Paragraph A.3 above) and
- (2) By requiring that the area around a public water supply wellhead be kept in a natural state based on the State of New Hampshire's sanitary wellhead protective radii rules.

**Section 7:**

**Paragraph A:** Updated Best Management Practices for Agriculture publication references.

**Proposal to Amend Madbury  
Zoning Ordinances, Article IX-A  
Wellhead and Aquifer Overlay District**  
(January 18<sup>th</sup>, 2021)

**Paragraph E:** Improved organization by moving Spill Control Plan requirements to this paragraph from less appropriate location in Paragraph K. Update plan requirements based on SRPC model ordinance.

**Paragraph K:** Deleted spill plan per Paragraph E note above.

**Section 8:**

New paragraph added to record existing applicability to preexisting non-conforming uses.

**Section 9 (Old Section 8):**

Deleted reference to regulated substances since requirements are covered in Section 7.E.

**Additional Information:**

A full copy of the proposed amended ordinance is attached.

Information from the Public Hearing is available at the Planning Board web site under the “2021-01-06 Handouts” link at: [http://www.madburynh.org/MadPlan/show\\_meetinghandouts.php?item=308](http://www.madburynh.org/MadPlan/show_meetinghandouts.php?item=308).

Current Zoning Ordinances are available at Town Hall or on the Planning Board web site at: [http://www.madburynh.org/Madbury/docs/Booklet\\_2017/pdfs/Part\\_4\\_Zoning\\_Ordinances\\_2017.pdf](http://www.madburynh.org/Madbury/docs/Booklet_2017/pdfs/Part_4_Zoning_Ordinances_2017.pdf)

Respectfully Submitted,  
Madbury Planning Board

Attached: Draft Amended Zoning Article IX-A

**Proposal to Amend Madbury  
Zoning Ordinances, Article IX-A  
Wellhead and Aquifer Overlay District**  
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**Article IX-A  
Aquifer and Wellhead Protection Overlay District**

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**Section 1 Authority**

The Town of Madbury hereby adopts this ordinance pursuant to the authority granted under RSA 674:16, in particular RSA 674:16, II and 674: 21 relative to innovative land use controls.

**Section 2 Purpose**

- A. The purpose of this article is to implement the adopted Town of Madbury Master Plan priority objective to: "Protect water resources in Madbury from contamination, depletion and disfigurement using watershed management principles. Act as stewards for municipal and regional water supplies located within the Oyster River, Bellamy River, and Little Bay watersheds."
- B. Clean and abundant water from Madbury's ground water aquifers is necessary for the health, welfare, safety and prosperity of the Town and its surrounding area. Wells serving public water systems are critical resources. This article provides protections for these essential resources from risks associated with adverse land use and development.

**Section 3 District Boundaries**

- A. The Aquifer and Wellhead Protection Overlay District includes the following:
  - 1. Land above stratified drift aquifers, as identified on the "US Geological Survey, Geohydrology and Water Quality of Stratified-Drift Aquifers in the Bellamy, Cochecho, and Salmon Falls River Basins, Southeastern New Hampshire Plates 2. 4 and 6 dated 1992," or as identified as part of a site plan or subdivision plan review or other process.
  - 2. Land within the current designated Wellhead Protection Areas (WHPA), as defined by NH RSA 485-C:2 and identified by the New Hampshire Department of Environmental Services.
  - 3. Land within a 400-foot radius of a Public Water System well, as defined by NH RSA 485:1-a.
- B. The lands described in Section 3(A) are depicted on the map entitled "Town of Madbury Aquifer and Wellhead Protection Overlay District" dated [insert date of updated map], as amended. This map shall be on file at the Town Office. If the boundaries of the Aquifer and Wellhead Protection Overlay District shown on this map differ from the lands described above, Section 3(A) shall prevail.
- C. If an Aquifer and Wellhead Protection Overlay District boundary is uncertain or contested, the boundary in question shall be determined by a New Hampshire licensed Professional Engineer, hydrologist, geologist, or soil scientist acceptable to the Planning Board. The owner of the property where the boundary is in question shall bear the costs of such determination.

**Section 4 Applicability**

- A. The requirements of this article apply to all land within the Aquifer and Wellhead Protection Overlay District. The requirements of this article are in addition to those of the underlying zoning district. If requirements of the Aquifer and Wellhead Protection Overlay District and other applicable districts are in conflict as applied to a specific plot, the more restrictive requirement shall apply.
- B. Site design and development requirements and performance standards in this article shall apply to all land use activities and development within the Aquifer and Wellhead Protection

**Proposal to Amend Madbury  
Zoning Ordinances, Article IX-A  
Wellhead and Aquifer Overlay District**  
(January 18<sup>th</sup>, 2021)

Overlay District including, but not limited to, additions and modifications to a site or structure, and development requiring subdivision plan, or site plan approval, or building permits.

**Section 5 Permitted, Prohibited, and Conditional Uses, and Exemptions**

- A. Permitted Uses. All land uses that are permitted in the underlying district are permitted in the Aquifer and Wellhead Protection Overlay District, subject to the performance standards of Section 7, unless expressly prohibited in Section 5(B), allowed as a Conditional Use in Section 5(C), or listed as exempt in Section 5(D). All underlying, permitted, and conditional land uses in this district must also comply with the requirements of Section 6.
- B. Prohibited Uses. The following land uses are prohibited in the Aquifer and Wellhead Protection Overlay District:
1. Disposal or storage of solid waste, construction materials, vegetative debris except as part of the process of improving the subject parcel.
  2. The development or operation of a solid waste landfill under RSA 149:M-9.
  3. The development or operation of a wastewater or septage lagoon.
  4. Open liquid waste pond.
  5. Application of wastewater residuals as defined by NH DES Rules Wq Env-800-811.
  6. The development or operation of a junkyard or waste salvage yard.
  7. Commercial motor vehicle repair shops.
  8. The outdoor unenclosed storage of road salt or other de-icing chemicals in bulk.
  9. The development or operation of a snow dump.
  10. The development or operation of a petroleum bulk plant or terminal.
  11. The development or operation of gasoline stations.
  12. Commercial animal feedlots.
  13. Commercial storage of manure, fertilizers, herbicides, or other leachables, except for the temporary storage of such material when it is incidental to the principal use and stored in a manner that avoids leaching and runoff.
- C. Conditional Uses.
1. The following land uses are allowed in the Aquifer and Wellhead Protection Overlay District, subject to restrictions in the underlying district, if the Planning Board approves a Conditional Use Permit in accordance with Article IV, Section 9 of this Ordinance.
    - a. Storage, handling, and use of regulated substances in quantities exceeding 55 gallons or 660 pounds dry weight at any one time or exceeding reportable quantities listed under 40 CFR 302, 7-1-05 edition or as amended, provided that an adequate spill prevention, control, and countermeasure (SPCC) plan in accordance with 7(E)(2) is approved by the Fire Chief.
    - b. Any use that will render impervious more than 15 percent of any lot that is 0.38 acres or larger or 2,500 square feet of any lot that is less than 0.38 acres.<sup>1</sup>
    - c. Any activities that involve blasting of bedrock.
    - d. General service and repair shops, including but not limited to: furniture stripping, painting, and refinishing; photographic processing; printing; appliance and small engine repair; boat repair, service and refinishing; refrigeration, heating, ventilating and air conditioning shops.
    - e. Metalworking shops, including, but not limited to: machine shops; metal plating shops; heat treating shops; smelting shops; and jewelry making shops.

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<sup>1</sup> Revised [March 2019]

**Proposal to Amend Madbury  
Zoning Ordinances, Article IX-A  
Wellhead and Aquifer Overlay District**

(January 18<sup>th</sup>, 2021)

- f. Manufacturing facilities, including but not limited to: electronics and chemical manufacturing, processing, and reclamation; paper, leather, plastic, fiberglass, rubber, silicon and glass making; pharmaceutical production; pesticide manufacturing; and chemical preservation of wood and wood products.
  - g. Receipt, processing and storage of ferrous and non-ferrous metals and related byproducts produced in the recycling of vehicles, appliances and other predominately metal items.
  - h. Laboratories and professional medical offices, including but not limited to: medical, dental, and veterinary offices; and research and analytical laboratories.
  - i. Cleaning services, including but not limited to: dry cleaner; laundromats; and car washes.
  - j. Storage of petroleum or related products in quantities greater than 550 gallons for on-premises use.
2. In granting a Conditional Use Permit the Planning Board must first determine:
    - a. The applicant has demonstrated the proposed use and design are consistent with the purpose of this Article.
    - b. The proposed use will be in compliance with the Performance Standards in Section 7 of this Article as well as all applicable local, state and federal requirements and the criteria of Article 4, Section 9, D of this ordinance.
  3. The Planning Board, at its discretion, may 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 and the future monitoring and/or periodic inspection of same required for compliance with the Performance Standards. Additionally, The Planning Board, at its discretion, may require routine monitoring and inspection activities to assure, confirm and document compliance with Performance Standards and other applicable provisions of this Article IX-A.
- D. Exemptions.
1. The Town Transfer Station and associated operations on Pudding Hill Road are exempt from the provisions of this article.
  2. Storage of any liquid that is gaseous at atmospheric temperatures and pressures, such as propane.

**Section 6 State Sanitary Wellhead Protection Radii**

The area around a public water supply well known as the sanitary wellhead protective radii must be maintained in its natural state as required by New Hampshire Department of Environmental Services. The size of this area ranges from 75 to 400 feet, depending on the amount of water withdrawn from the well. Refer to Env Dw 301 or 302 (for community water systems) and Env-Dw 405.14 and 406.12 (for other public water systems) for radius sizes.

**Section 7 Performance Standards**

- A. All uses within the Aquifer and Wellhead Protection Overlay District shall conform to the standards and practices delineated in the following documents on file with the Planning Board, unless this Ordinance specifies more strict standards:
  1. Manual of Best Management Practices for Agriculture in New Hampshire, NH Dept. of Agriculture, July 2017, or as amended.
  2. Best Management Practices to Control Nonpoint Source Pollution--A Guide for Citizens and Town Officials, NH DES, WD-03-42, January, 2004, or as amended.
  3. Required Best Management Practices for Groundwater Protection, New Hampshire

**Proposal to Amend Madbury  
Zoning Ordinances, Article IX-A  
Wellhead and Aquifer Overlay District**

(January 18<sup>th</sup>, 2021)

- Code of Administrative Rules, Env-Wq 401, or as amended.
4. State of New Hampshire Septage Management Rules, New Hampshire Code of Administrative Rules, Env-Wq 1600, or as amended
  5. State of New Hampshire Sludge Management Rules, New Hampshire Code of Administrative Rules, Env-Wq 800, or as amended.
  6. Best Management Practices for Erosion Control on Timber Harvesting Operations, UNH Cooperative Extension, 2016, or as amended.
  7. Pesticide Management Guidelines for Groundwater Protection, UNH Cooperative Extension, November 1992, or as amended.
  8. Manual of Best Management Practices-Biosolids, UNH Cooperative Extension, 1995, or as amended.
- B. For any use that will render impervious more than 15 percent of any lot that is 0.38 acres or larger or more than 2,500 square feet of any lot smaller than 0.38 acres, a stormwater management plan shall be prepared. The stormwater management plan shall comply with New Hampshire Stormwater Manual Volumes 1-3, December 2008 (or as amended), NH Department of Environmental Services. Such plan shall address control of parking lot pollutants including but not limited to petroleum product residue.<sup>2</sup>
- C. Design shall accommodate equipment failures and operational errors without environmental impact, including:
1. Below ground level-removal and replacement of leaking parts, a leak detection system with monitoring, and an overflow protection system.
  2. Above ground level-liquid and leaching monitoring of primary containment systems, the replacement or repair and cleanup and/or repair of the impervious containment surface.
- D. All underground storage facilities shall conform to the requirements of DES Rules Env-Wm-1401 as revised.
- E. Regulated substances
1. Regulated substances stored in containers with a capacity of five gallons or more must:
    - a. Be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains, and outside drains; and
    - b. Be secured against unauthorized entry by means of a door and/or gate that is locked when authorized personnel are not present and must be inspected weekly by the facility owner.
  2. Conditional uses as described under Section 5(C)(1)(a) using regulated substances shall submit a spill control and countermeasure (SPCC) plan to the Fire Chief, who shall determine whether the plan will prevent, contain, and minimize releases from ordinary or catastrophic events such as spill, floods, or fires that may cause large releases of regulated substances. It shall include:
    - a. A description of the physical layout and a facility diagram, including all surrounding surface waters and wellhead protection areas.
    - b. Contact list and phone numbers for the current facility response coordinator(s), cleanup contractors, and all appropriate federal, state, and local agencies who must be contacted in case of a release to the environment.
    - c. A list of all regulated substances in use and locations of use and storage;
    - d. A prediction of the direction, rate of flow, and total quantity of regulated substance that could be released where experience indicates a potential for equipment failure.
    - e. A description of containment and/or diversionary structures or equipment to prevent

**Proposal to Amend Madbury  
Zoning Ordinances, Article IX-A  
Wellhead and Aquifer Overlay District**  
(January 18<sup>th</sup>, 2021)

- regulated substances from infiltrating into the ground.
- f. List of positions within the facility that require training to respond to spills of regulated substances.
  - g. Prevention protocols that are to be followed after an event to limit future large releases of any regulated substance.
- F. Outdoor storage areas for regulated substances, associated material or waste must be protected from exposure to precipitation and must be located at least 50 feet from surface water or storm drains, at least 75 feet from private wells, and outside the sanitary protective radius of wells used by public water systems.
- G. Secondary containment must be provided for outdoor storage of regulated substances in regulated containers and the containment structure must include a cover to minimize accumulation of water in the containment area and contact between precipitation and storage container(s).
- 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.
- I. Prior to any land-disturbing activities, all inactive wells on the property, not in use or properly maintained at the time the plan is submitted, shall be considered abandoned and must be sealed in accordance with We 604 of the New Hampshire Water Well Board Rules.
- J. Blasting activities shall be planned and conducted to minimize groundwater contamination. Excavation activities should be planned and conducted to minimize adverse impacts to hydrology and the dewatering of nearby drinking water supply wells.
- K. All Conditional Uses as defined in Section 5 C of this Article shall also be subject to the following:
- 1. Submission of an Environmental Protection Plan prepared by an appropriately licensed expert that:
    - a. Demonstrates conformance to DES rule ENV-Wq-401 "Best Management Practices for Groundwater Source Protection".
    - b. Specifies the amount and composition of any industrial or commercial waste that will be generated on-site and details the method for disposal of such waste outside of the Aquifer and Wellhead Protection Overlay District.
    - c. Provides description of a routine inspection and monitoring program.
  - 2. Documentation that the applicant has addressed any recommendations provided by the Madbury Water Resources Board, Madbury Conservation Commission and Madbury Fire Department.
  - 3. The Planning Board may require additional independent hydrogeological study or other technical review and analysis of sites and applications. The costs of all such review and analysis shall be borne by the applicant.

**Section 8 Existing Non-Conforming Uses**

Existing non-conforming uses may continue without expanding or changing to another non-conforming use, but must be in compliance with all applicable state and federal requirements, including Env-Wq 401, Best Management Practices Rules.

**Section 9 Administration**

- A. Routine monitoring and inspection activities required by the Conditional Use Permit shall be performed by the Selectmen's delegate at reasonable times with prior notice to the landowner.



**Proposal to Amend Madbury  
Zoning Ordinances, Article IX-A  
Wellhead and Aquifer Overlay District**  
(January 18<sup>th</sup>, 2021)

- B. Spill Response Plans must be reviewed annually by the Selectmen's delegate.
- C. Annually the operator of a sand and gravel extraction operation shall prepare a report for the Town documenting compliance with the requirements of this Article. Pursuant to NH RSA 155-E:11, if the requirements of this section may be waived if the applicant demonstrates that such excavation will not adversely affect water quality and that written notice of such exception shall be recorded in the Registry of Deeds, and one copy filed with the NH Department of Environmental Services.
- D. The Building Inspector or Selectmen's delegate may require changes to facility designs and environmental protection plans to correct deficiencies in aquifer and wellhead protection.
- E. The Selectmen may revoke a Conditional Use Permit if they find risks to an aquifer or wellhead unacceptable.
- F. The owner and/or operator of a facility operating under a Conditional Use Permit shall report all incidents involving liquid or chemical material release to the Building Inspector or Selectmen's delegate.
- G. The Building Inspector or Selectmen's delegate will receive reports of spills, leaks or containment failures and investigate and make referrals as appropriate.
- H. For Conditional Use Permits requiring periodic monitoring or inspection, a narrative description of these requirements shall be recorded at the Registry of Deeds for Strafford County. The description shall comply with the requirements of NH RSA 478:4-a.

# Proposal to Amend Madbury Zoning Ordinances, Article IX-A Wellhead and Aquifer Overlay District (January 18<sup>th</sup>, 2021)

