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DONALD G. PAIGE  
ELIZABETH A. LANE  
JOYCE FRANK  
JOHN W. GIORGIO  
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JOSEPH L. TEHAN, JR.  
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DEBORAH A. ELIASON  
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JASON R. TALERMAN  
GEORGE X. PUCCI

JANET HETHERWICK PUMPHREY  
DIRECTOR WESTERN OFFICE  
WILLIAM HEWIG III  
JEANNE S. MCKNIGHT

**KOPELMAN AND PAIGE, P. C.**

ATTORNEYS AT LAW

31 ST. JAMES AVENUE

BOSTON, MASSACHUSETTS 02116-4102

(617) 556-0007

FAX (617) 654-1735

LENOX OFFICE

(413) 637-4300

NORTHAMPTON OFFICE

(413) 585-8632

WORCESTER OFFICE

(508) 752-0203

KATHLEEN M. O'DONNELL  
PATRICIA A. CANTOR  
THOMAS P. LANE, JR.  
MARY L. GIORGIO  
MICHELE E. RANDAZZO  
THOMAS W. MCENANEY  
KATHARINE GOREE DOYLE  
LAUREN F. GOLDBERG  
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GREGG J. CORBO  
RICHARD T. HOLLAND  
ELIZABETH R. CORBO  
MARIA C. ROTA  
VICKI S. MARSH  
JOHN J. GOLDROSEN  
SHIRIN EVERETT  
BRIAN E. GLENNON, II  
JONATHAN D. EICHMAN  
JOSEPH S. FAIR  
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CAROLYN M. MURRAY  
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BRIAN M. MASER  
CAROLYN KELLY MACWILLIAM  
ANNE C. ROSENBERG  
PETER L. MELLO

October 31, 2005

BY HAND

Mr. Stephen R. Pritchard  
Secretary  
Executive Office of Environmental Affairs  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Re: Petition for Fail-Safe Review - L. G. Hanscom Field –  
Proposed Development of Hangar 24

Dear Secretary Pritchard:

This firm serves as counsel to the Towns of Bedford, Concord, Lexington, and Lincoln with respect to the ongoing development activity at L. G. Hanscom Field.

Pursuant to 301 CMR, §11.04, the members of the Boards of Selectmen of each of the Towns, acting both in their official capacities and as individuals, hereby petition the Secretary of Environmental Affairs for Fail-Safe review of the proposal by Crosspoint Aviation Services, Inc. ("Crosspoint") to construct so-called Hangar 24 on land to be leased to it by Massachusetts Port Authority ("Project"). The signed petition is attached hereto as Exhibit A.

As explained in more detail below, the basis for this petition is that the Project is located within the Zone II recharge area of a public water supply, thus triggering the application of the Concord Zoning By-Law. Massport claims that its land is exempt from local zoning requirements. However, unless further MEPA review is required, the Project has the potential to cause damage to the environment because there would be no other regulatory process to consider the potential damage to the public water supply wells that may occur.

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Executive Office of Environmental Affairs  
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Accordingly, the undersigned individuals hereby request that the Secretary require Massport and Crosspoint to prepare an Environmental Notification Form ("ENF") and that, due to the significant potential for damage to the environment, request that the Secretary order the preparation of an Environmental Impact Report.

The Project is located within the geographic limits of the Town of Concord. It is also located within the Zone II of three public water supply wells maintained by the Town of Bedford, known as the Hartwell Road Wellfield. A map showing the Zone II delineation of these wells is attached as Exhibit B. These wells serve as a back-up water supply for the Town of Bedford. The three wells have a combined yield of .82 mgd. Although the wells are not currently utilized by the Town due to some contamination discovered in the pumped water, the Town is required, as a condition of its water supply agreement with the Massachusetts Water Resources Authority ("MWRA"), to maintain the Hartwell Road Wellfield as a back-up water supply source. It is anticipated that the wellfield will be reactivated as soon as the contamination is no longer present or the cost to install a water treatment facility is economically feasible.

The Regulations of the Department of Environmental Protection ("DEP") relating to groundwater supply protection, 310 CMR 22.21, requires the adoption of zoning or non-zoning controls by local municipalities to protect the groundwater sources that serve as a source for a public water supply. See 310 CMR 22.21(1)(c)(4). The specific zoning controls that must be in place are set forth in detail at 310 CMR 22.21(2)(a) and (b). Notably, 310 CMR 22.21(1)(d)(2) requires that such zoning controls be in place in all municipalities in which any part of a Zone II is located. A copy of 310 CMR 22.21 is attached as Exhibit C.

To implement these controls for the purpose of protecting the Hartwell Road Wells located in Bedford, the Town of Concord has enacted a zoning by-law and created the Groundwater Conservancy Overlay District. The relevant portion of the Concord Zoning By-Law is attached hereto as Exhibit D. A copy of the Town of Concord Zoning Map showing the coverage of the Groundwater Conservancy District in relation to the Project is attached hereto as Exhibit E.

There is no doubt that the DEP groundwater protection regulations and the Town of Concord Groundwater Conservancy District Zoning By-Law is a state-mandated regulatory scheme that has as its primary purpose the protection of the environment. Indeed, Section 7.6.2 of the by-law states that the purpose of the by-law is "To promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Concord."

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As required by the DEP regulation, the by-law sets forth three categories of uses within the Groundwater Conservancy District. Section 7.6.4 lists uses permitted without review by the Board. Section 7.6.5 lists uses permitted subject to review by the Board. Section 7.6.6 lists prohibited uses. The procedure for review by the Concord Zoning Board of Appeals is set forth in Section 7.6.7 of the by-law. The by-law requires a detailed application setting forth the list of hazardous materials and fuels that will be utilized on the site as well as the requirement for a detailed explanation of the method of storage of such materials. The standards under which a special permit is considered by the Board of Appeals are set forth in Section 7.6.7.2 and include such considerations as the potential for affecting groundwater quality and recharge. Finally, Section 7.6.7.3 of the by-law permits the Board to impose conditions necessary to safeguard public safety, welfare and convenience. Because the by-law creates an overlay district, all uses prohibited in the underlying zoning district are likewise prohibited in the Groundwater Conservancy District.

According to Section 7.6.6.10 of the by-law, except for very small quantity generators, facilities that generate, treat, store, or dispose of hazardous waste are prohibited within the Groundwater Conservancy District. This prohibition is a measure of the serious potential for adverse effects on the groundwater supply that storage of hazardous materials can cause within the Zone II of a public water supply well. In addition, there are uses which may be approved by the Zoning Board of Appeals pursuant to a special permit that would, in all likelihood, apply to the Hangar Project. Finally, it should be noted that pursuant to Section 11.7 of the by-law, use variances are permitted, but only in accordance with the criteria set forth in the by-law.

Although there is limited information available regarding the Hangar 24 proposal, it is apparent that substantial amounts of jet fuel and other flammable and potentially hazardous materials will be located on the site, which, in all likelihood, would be prohibited in the Groundwater Conservancy District. There are other uses associated with the Project which would most likely require a special permit.<sup>1</sup>

In addition, the use of this property for the storage of flammable materials would be subject to the issuance of a license by the Concord Board of Selectmen pursuant to the regulatory scheme set forth in G.L. c.148, §13. One of the essential elements of this permitting process is to ensure that adequate measures are taken to protect the environment.

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<sup>1</sup> In addition to the requirements of the Groundwater Conservancy District by-law, the Project may be subject to other regulatory requirements of the Concord Zoning By-Law as well as the Town of Concord Groundwater Protection General By-Law. See Exhibit F.

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Due to the circumstances of this particular project, however, it does not appear that adequate review of this proposal will be conducted through the local permitting process. Massport has stated in its Request for Proposals for the development of Hangar 24 that "the Authority's properties are not subject to zoning." See Section 1.7 of "L.G. Hanscom Field Hangar 24 Request for Proposal" dated January 2005. The Towns acknowledge, however, that there is some confusion in the record regarding the intent of Massport and Crosspoint to comply with local zoning requirements. For example, in its proposal for the Project Crosspoint states that: "The facility will be permitted and developed in accordance with all applicable local, state, and federal zoning and building requirements." See Development Proposal dated March 8, 2005, page 24. There is, however, no further explanation provided by Crosspoint, and no acknowledgement of the zoning compliance requirements under the Concord Zoning By-Law. In addition, the Final ESPR states that: "The third party developer will follow appropriate local, state, and federal review as it is determined to be applicable for these and other projects."

Given the uncertainty regarding Massport's intention to require compliance with local permitting requirements, and the fact there has been no action by Crosspoint to inquire about or commence local permitting, the Towns can only assume that the intent of Massport and Crosspoint is to proceed with the Project without at least applying for a variance and/or a special permit under the Groundwater Conservancy By-Law. Accordingly, unless the Secretary grants this Fail-Safe review petition, there is a substantial likelihood that the Project will proceed without any analysis of the potential damage to the environment, and in particular, the continuing threat that this Project will pose to an important public water supply for the Town of Bedford and the surrounding Towns.

Pursuant to the MEPA regulations, 301 CMR 11.04, the Secretary is authorized, upon a written petition of ten or more persons, to require a project proponent to file an ENF or undergo other MEPA review for a project, even if the project does not meet or exceed any review thresholds set forth in 310 CMR 11.03.

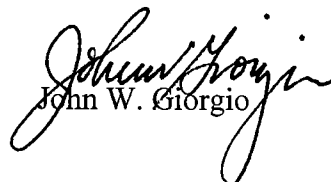
The regulations provide that review under the Fail-Safe provisions may be ordered if the Secretary determines that a project has the potential to cause damage to the environment and that the potential damage would be caused by a circumstance or combination of circumstances that individually would not ordinarily cause damage to the environment, and that such review is essential to avoid or minimize damage to the environment and will not result in an undue hardship for the proponent.

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The Towns, as well as the undersigned individuals, submit that the Project proposed by Massport and Crosspoint for Hanscom Field meets the criteria for Fail-Safe review set forth in the MEPA regulations. Clearly, the project poses a serious threat of damage to the environment because of the anticipated response from Massport that the Crosspoint Project is not subject to local review and permitting under the Concord Zoning and General Bylaws. In view of the fact that the Secretary has not up until now required separate MEPA review of this Project, there is no other avenue to ensure that the Project proponents adequately address the potential for damage to the environment other than through the Fail-Safe review process.

Furthermore, it is the position of the undersigned that requiring Fail-Safe review of the project will not result in any undue hardship for the proponents because the project has not commenced. Although further MEPA review may result in some delay to the Project, this delay is more than outweighed by the necessity of ensuring that the appropriate MEPA review address the potential for environmental damage that this Project will have on the groundwater supply of the Town of Bedford and the surrounding Towns.

Very truly yours,

  
John W. Giorgio

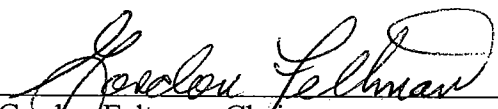
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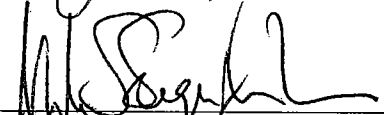
cc: His Excellency Mitt Romney  
Hon. Kerry Healey  
Robert Golledge, Commissioner  
Department of Environmental Protection  
Craig P. Coy, Chief Executive Officer  
Massachusetts Port Authority  
Barbara Patzner, Hanscom Field Director  
Massachusetts Port Authority  
Bedford Town Administrator  
Concord Town Manager  
Lexington Town Manager  
Lincoln Town Administrator

L. G. Hanscom Field – Petition for Fail-Safe Review

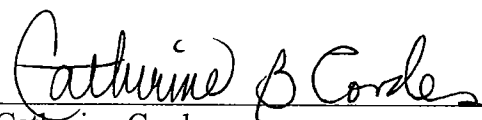
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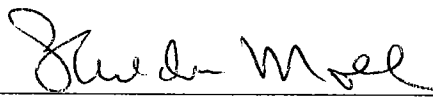
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\_\_\_\_\_  
Gordon Feltman, Chairman

  
\_\_\_\_\_  
Mark Siegenthaler

\_\_\_\_\_  
Angelo Colao

  
\_\_\_\_\_  
Catherine Cordes

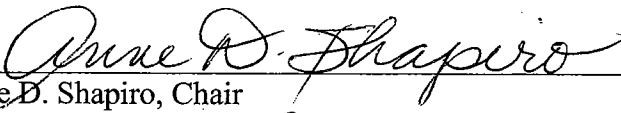
  
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Sheldon Moll

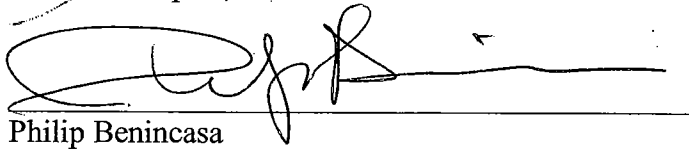
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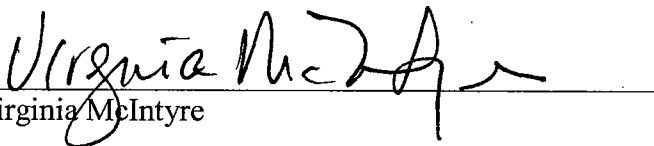
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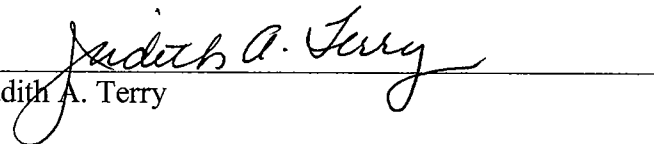
AS INDIVIDUALS, AND

AS MEMBERS OF THE CONCORD BOARD OF SELECTMEN:

  
\_\_\_\_\_  
Anne D. Shapiro, Chair

  
\_\_\_\_\_  
Philip Benincasa

  
\_\_\_\_\_  
Virginia McIntyre

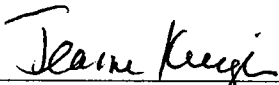
  
\_\_\_\_\_  
Judith A. Terry

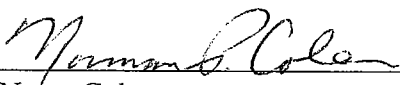
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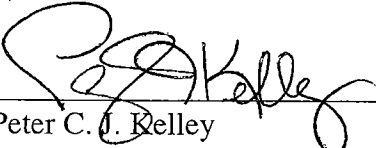
L. G. Hanscom Field – Petition for Fail-Safe Review


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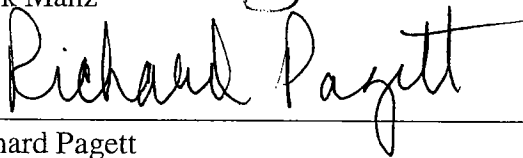
AS MEMBERS OF THE LEXINGTON BOARD OF SELECTMEN:

  
\_\_\_\_\_  
Jeanne K. Krieger, Chair

  
\_\_\_\_\_  
Norm Cohen

  
\_\_\_\_\_  
Peter C. J. Kelley

  
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Hank Manz

  
\_\_\_\_\_  
Richard Pagett

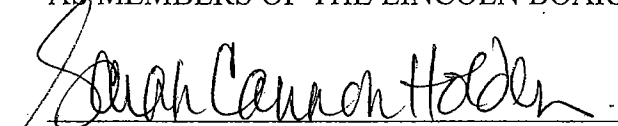
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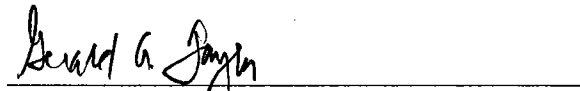
L. G. Hanscom Field – Petition for Fail-Safe Review

AS INDIVIDUALS, AND

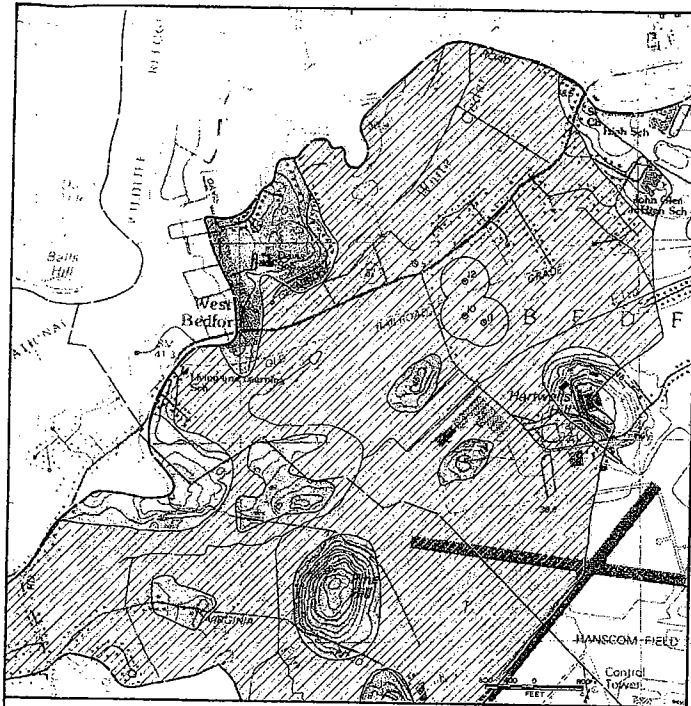
AS MEMBERS OF THE LINCOLN BOARD OF SELECTMEN:

  
Sarah Cannon Holden, Chair

  
Sara A. Mattes

  
Gerald A. Taylor

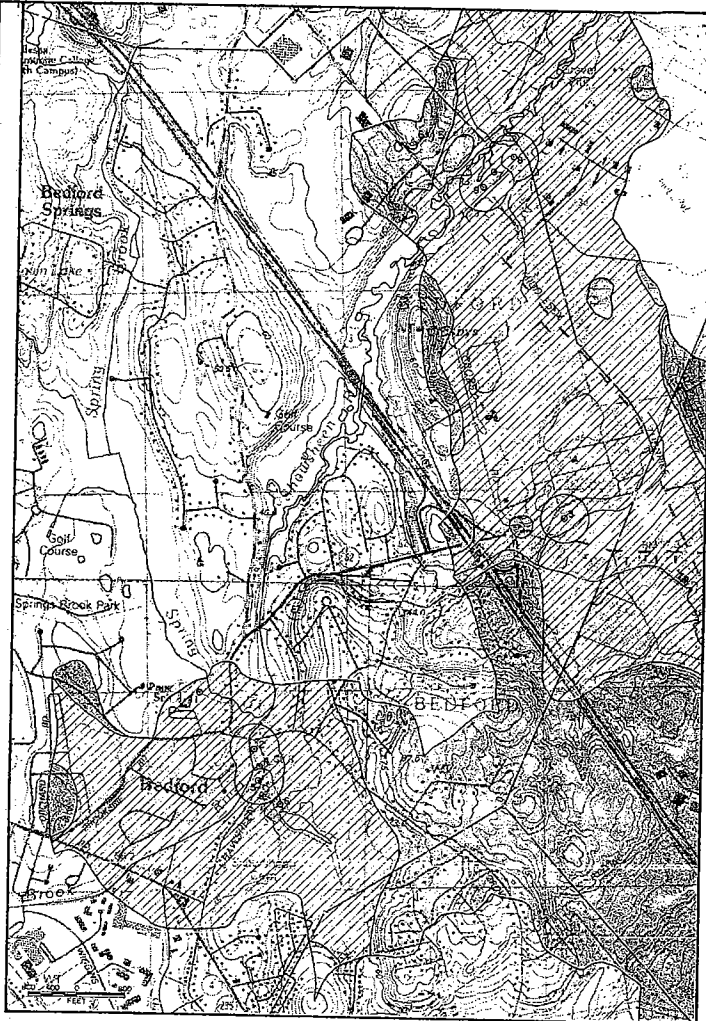
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DETAIL OF HARTWELL ROAD WELLFIELD AREA

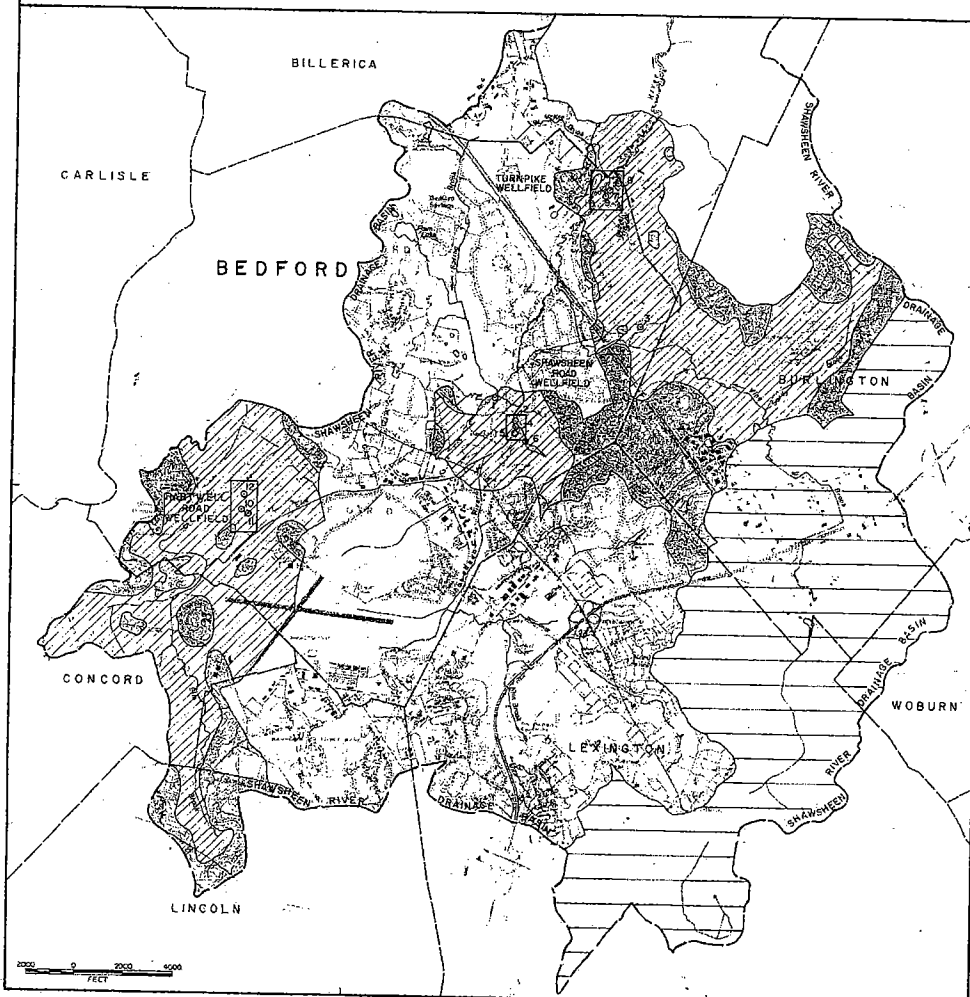
LEGEND

- ZONE II
  - ZONE IIIA
  - ZONE IIIB
  - ZONE I
  - SHAWSHOEN RIVER ORANGE BASIN BOUNDARY
  - TOWN BOUNDARY
  - TOWN OF BEDFORD MUNICIPAL WATER SUPPLY WELL
  - DIRECTION OF SURFACE WATER FLOW
  - CONTOUR INTERVAL 3 METERS
- NOTE: ZONE I IS A SPECIAL ZONE WHICH INCLUDES ONLY WELLS NO. 2, 4 AND 5. THIS ZONE IS NOT SHOWN ON THE DETAIL MAPS.



DETAIL OF SHAWSHOEN ROAD WELLFIELD, WELL NO. 3 AND TURNPIKE WELLFIELD AREA

- NOTE: 1. SHAWSHOEN ROAD WELLFIELD INCLUDES ONLY WELLS NO. 2, 4 AND 5.
- 2. BASE MAP FROM USGS QUADRANGLE: BILLERICA, MARYARD, BEDFORD, SUTTON NORTH.



TOWN OF BEDFORD, MASSACHUSETTS  
 HYDROGEOLOGIC ZONES  
 FOR  
 BEDFORD WATER SUPPLY WELLS

CAMP DRESSER & MCKEE, INC.  
 ENVIRONMENTAL ENGINEERS  
 CAMBRIDGE, MASSACHUSETTS

JULY 1995

FIG. 1  
 94-522E

Westlaw

310 MA ADC 22.21

Page 1

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**CODE OF MASSACHUSETTS  
REGULATIONS  
TITLE 310: DEPARTMENT OF  
ENVIRONMENTAL PROTECTION  
CHAPTER 22.00: DRINKING WATER**

Current through October 21, 2005, Register #1037

22.21: Groundwater Supply Protection

The following requirements shall apply to all persons to protect groundwater used as sources of public drinking water supply from contamination:

(1) Source Approval

(a) No public water supply well, wellfield, or spring shall be constructed, expanded or replaced, and no water supply well, wellfield, or spring shall be placed on-line in a public water system, without the prior written approval of the Department. Persons seeking such approval are directed to follow the procedures set forth in the Drinking Water Program's "Guidelines and Policies for Public Water Systems," as amended.

All requests for source approval, or approval of Zone II and III delineations, shall be submitted to the Department's Regional Office serving the area where the proposed well, wellfield, or spring is located.

In determining whether to grant such approval, the Department shall apply the criteria set forth in 310 CMR 22.21 and the "Guidelines and Policies for Public Water Systems." Copies of the "Guidelines and Policies for Public Water Systems" are available for a nominal fee from the State Book Store, State House, Room 116, Boston, Massachusetts and 436 Dwight Street, Springfield, Massachusetts.

(b) No public water supply well or wellfield designed to withdraw, or spring which flows, less than 100,000 gallons per day shall be constructed, expanded or replaced, or placed on-line, unless the Department finds in writing:

1. that the proponent has satisfactorily complied with the Drinking Water Program's "Guidelines and Policies for Public Water Systems," as amended;

2. that the source of water supply for the well, wellfield, or spring will achieve all applicable water quality standards set forth in the Massachusetts Drinking Water Regulations, 310 CMR 22.00;

3. that the proponent has properly determined the Zone I of the proposed well, wellfield, or spring;

4. that the Zone I of the proposed well, wellfield, or spring is owned or controlled by the supplier of water; and

5. that current and/or future land uses within the Zone I are limited to those directly related to the provision of public drinking water or will have no significant adverse impact on water quality.

In addition, the Department may require the proponent to delineate Zones II and III, and submit a groundwater monitoring well program plan for approval if the Department finds that existing or proposed land uses within the Interim Wellhead Protection Area of the proposed well, wellfield, or spring, determined in accordance with 310 CMR 22.21(1)(i), may pose a threat to water quality.

(c) No public water supply well, wellfield or spring designed to withdraw, or spring which flows, 100,000 gallons per day or more shall be constructed, expanded or replaced unless the Department finds in writing:

1. that the proponent has met all the requirements set forth in 310 CMR 22.21(1)(b)1. through 310 CMR 22.21(1)(b)5.;

2. that the proponent has properly delineated the Zones II and III of the proposed well, wellfield, or spring;

3. that the proponent has submitted a groundwater monitoring well program plan designed to evaluate

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the water quality impacts of land uses within the Zone II of the proposed well, wellfield, or spring; and

4. that the proponent has drafted wellhead protection zoning or nonzoning controls that prohibit siting within the Zone II the land uses set forth in 310 CMR 22.21(2)(a) and 310 CMR 22.21(2)(b) unless designed in accordance with the performance standards specified therein, and has complied with the nitrate management requirement of 310 CMR 22.21(2)(d).

(d) No public water supply well, wellfield or spring designed to withdraw, or spring which flows, 100,000 gallons per day or more shall be placed on-line unless:

1. a groundwater monitoring well program plan approved by the Department has been fully implemented (i.e. the monitoring wells are operational and the sampling frequency and parameters have been approved by the Department); and

2. the cities and towns in which any part of the Zone II of the proposed well, wellfield, or spring is located have wellhead protection zoning or nonzoning controls in effect that prohibit siting within the Zone II the land uses set forth in 310 CMR 22.21(2)(a) and 310 CMR 22.21(2)(b) unless designed in accordance with the performance standards specified therein. If the public water system is owned or controlled by an entity other than a municipality, the proponent must demonstrate to the Department's satisfaction that it has used its best efforts to have all cities and towns in which the Zone II is located establish such zoning or nonzoning controls.

(e) Notwithstanding 310 CMR 22.21(1)(d)(2), no public water supply well, wellfield or spring designed to withdraw, or spring which flows, 100,000 gallons per day or more that will be used in a public water system owned or operated by a municipality, and is located within that municipality, shall be placed on-line unless the municipality has wellhead protection zoning or nonzoning controls in effect that prohibit siting within the Zone II the land uses set forth in 310 CMR 22.21(2)(a) and 310 CMR 22.21(2)(b) unless

designed in accordance with the performance standards specified therein. If the Zone II of a municipal public water system extends into another municipality, the water supplier must also demonstrate to the Department's satisfaction that it has used its best efforts to have all cities and towns into which the Zone II extends establish such zoning or nonzoning controls within the Zone II.

(f) Notwithstanding any other regulatory provision to the contrary, the Department may waive the requirement that the proponent of a public water supply well, wellfield, or spring delineate the Zone II, provided:

1. the proponent has properly delineated the Zone III;

2. each city and town in which the Zone III of the proposed well, wellfield, or spring is located has wellhead protection zoning or nonzoning controls in effect that prohibit within the Zone III the land uses set forth in 310 CMR 22.21(2)(a) and 310 CMR 22.21(2)(b) unless designed in accordance with the performance standards specified therein;

3. the proponent has submitted a groundwater monitoring well program plan designed to evaluate the water quality impacts of land uses within the Zone III of the proposed well, wellfield, or spring; and

4. the desired relief can be granted without substantial detriment to the public good.

In the event the Department waives the requirement that the proponent delineate the Zone II of a proposed public water supply well, wellfield, or spring, the supplier of water shall fully implement the groundwater monitoring well program plan approved by the Department before placing the well, wellfield, or spring on-line (i.e. the monitoring wells shall be operational and the sampling frequencies and parameters shall have been approved by the Department).

(g) In determining whether a proponent has properly determined the Zone I or delineated the Zones II or III of a well, wellfield, or spring, or adequately designed a groundwater monitoring well program plan, the Department shall apply the

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criteria set forth in the Drinking Water Program's "Guidelines and Policies for Public Water Systems", as amended.

(h) Any person who receives Department approval for a public water supply well, wellfield or spring designed to withdraw, or spring which flows, 100,000 gallons per day or more that is not a replacement withdrawal point shall obtain a permit for any withdrawal, in accordance with the Water Management Act, M.G.L. c. 21G, and 310 CMR 36.00.

(i) If the Department has not approved the Zone II for a public water supply well, wellfield, or spring, the Department will utilize the Interim Wellhead Protection Area as defined in 310 CMR 22.02.

(j) The proponent may meet the requirements set forth in 310 CMR 22.21(1)(d)2. by demonstrating that existing rights in perpetuity or for a specific period of years stated in the form of a restriction, easement, covenant or condition in a deed or other instrument prohibit the siting of the land uses set forth in 310 CMR 22.21(2)(a) and 310 CMR 22.21(2)(b) within the Zone II.

(k) The proponent may meet the requirements set forth in 310 CMR 22.21(1)(f)2. by demonstrating that existing rights in perpetuity or for a specific period of years stated in the form of a restriction, easement, covenant or condition in a deed or other instrument prohibit the siting of the land uses set forth in 310 CMR 22.21(2)(a) and 310 CMR 22.21(2)(b) within the Zone III.

(l) No public water supply well, wellfield or spring designed to withdraw, or spring which flows, 100,000 gallons per day or more approved after the effective date of 310 CMR 22.21 shall remain on-line following the amendment or repeal of a wellhead protection zoning or nonzoning control pertinent to that well, wellfield, or spring, or the expiration of any such period of years stated in a deed or other instrument approved pursuant to 310 CMR 22.21(1)(j) or 310 CMR 22.21(1)(k), unless the Department finds in writing that the supplier of water meets the requirements set forth in 310 CMR 22.21(1)(d) or 310 CMR 22.21(1)(e), whichever is applicable, or grants a variance in accordance with 310 CMR 22.21(5). Any source of supply removed

from service shall be maintained by the supplier of water as an emergency source of water supply unless the Department finds in writing that the source is not needed by the supplier of water for present or future water supply.

(m) Notwithstanding any other regulatory provision to the contrary, the Department may exempt a supplier of water from any of the requirements set forth in 310 CMR 22.21(1)(d) while a state of water emergency declared pursuant to M.G.L. c. 21G, § 15, is in effect. In the event that the Department grants such an exemption, the well, wellfield, or spring shall remain on-line only for the duration of the state of water emergency, as determined by the Department.

#### (2) Wellhead Protection Zoning and Nonzoning Controls

(a) Wellhead protection zoning and nonzoning controls submitted to the Department in accordance with 310 CMR 22.21(1), shall collectively prohibit the siting of the following land uses within the Zone II, or Zone III if the criteria of 310 CMR 22.21(1)(f) have been met, of the proposed well, wellfield, or spring, whichever is applicable:

1. landfills and open dumps, as defined in 310 CMR 19.006;

2. landfills receiving only wastewater residuals and/or septage (wastewater residuals "monofills") approved by the Department pursuant to M.G.L. c. 21, § 26 through 53; M.G.L. c. 111, § 17; M.G.L. c. 83, §§ 6 and 7, and any regulations promulgated thereunder.

3. automobile graveyards and junkyard, as defined in M.G.L. c. 140B, § 1;

4. stockpiling and disposal of snow or ice removed from highways and streets located outside of Zone II that contains sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal;

5. petroleum, fuel oil and heating oil bulk stations and terminals, including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5171 (not including liquified petroleum gas)

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and 5983. SIC Codes are established by the U.S. Office of Management and Budget and may be determined by referring to the publication, Standard Industrial Classification Manual and any subsequent amendments thereto;

6. treatment or disposal works subject to 314 CMR 5.00 for wastewater other than sanitary sewage. This prohibition includes, but is not limited to, treatment or disposal works related to activities under the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6) (Title 5), except the following:

a. the replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s); and

b. treatment works approved by the Department designed for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or 5.05 (13); and

c. publicly owned treatment works, or POTWs.

7. facilities that generate, treat, store or dispose of hazardous waste that are subject to M.G.L. c. 21C and 310 CMR 30.000, except for the following:

a. very small quantity generators, as defined by 310 CMR 30.00;

b. household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390;

c. waste oil retention facilities required by M.G.L. c. 21, § 52A; and

d. treatment works approved by the Department designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters.

8. any floor drainage systems in existing facilities, in industrial or commercial hazardous material and/or hazardous waste process areas or storage areas, which discharge to the ground without a DEP permit or authorization. Any existing facility with such a drainage system shall be required to either seal the floor drain (in accordance with the state plumbing code, 248 CMR 2.00), connect the drain

to a municipal sewer system (with all appropriate permits and pre-treatment), or connect the drain to a holding tank meeting the requirements of all appropriate DEP regulations and policies.

(b) Wellhead protection zoning and nonzoning controls submitted to the Department in accordance with 310 CMR 22.21(1), shall collectively prohibit the siting of the following land uses within the Zone II, or Zone III if the criteria of 310 CMR 22.21(1)(f) have been met, of the proposed well, wellfield, or spring, whichever is applicable, unless designed in accordance with the performance standards specified below in 310 CMR 22.21(2)(b)1. through 7.:

1. storage of sludge and septage, as defined in 310 CMR 32.05, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;

2. storage of sodium chloride, chemically treated abrasives or other chemicals used for the removal of ice and snow on roads, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;

3. storage of commercial fertilizers, as defined in M.G.L. c. 128, § 64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;

4. storage of animal manures, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff and leachate;

5. storage of liquid hazardous materials, as defined in M.G.L. c. 21E, and/or liquid petroleum products unless such storage is:

a. above ground level, and

b. on an impervious surface, and

c. either

(i) in container(s) or above-ground tank(s) within a building, or

(ii) outdoors in covered container(s) or above-ground tank(s) in an area that has a

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containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater;

however, these storage requirements shall not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline provided the replacement is performed in a manner consistent with state and local requirements;

6. the removal of soil, loam, sand, gravel or any other mineral substances within four feet of the historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey), unless the substances removed are redeposited within 45 days of removal on site to achieve a final grading greater than four feet above the historical high water mark, and except for excavations for the construction of building foundations or the installation of utility works, or wetland restoration work conducted in accordance with a valid Order of Condition issued pursuant to M.G.L. c. 131, § 40;

7. and land uses that result in the rendering impervious of more than 15% or 2500 square feet of any lot or parcel, whichever is greater, unless a system for artificial recharge of precipitation is provided that will not result in the degradation of groundwater quality.

(c) The proponent shall give written notice to the Department of any and all local by-laws, ordinances, rules and regulations that allow for the grant of a variance, waiver or exemption from any of the wellhead protection zoning or nonzoning controls submitted to the Department for approval in accordance with 310 CMR 22.21 before placing the proposed well, wellfield, or spring on-line.

(d) The Department may require as part of the Source Approval process requirements of 310 CMR 22.21(1) (c), the completion of a nitrogen loading analysis for the new well, wellfield, or spring's Zone II. A nitrogen loading analysis shall be required when, in the Department's judgement, the type and level of land use within the Zone II or other information reasonably indicates that nitrate concentrations in the well, wellfield, or spring may

or will exceed five mg/l nitrate.

Public water systems required by their Water Management Act permits issued under 310 CMR 36.00 to define Zone IIs and implement land use controls shall be required to conduct a nitrate loading analysis as part of the Zone II delineation for well, wellfield, or springs that have exceeded five mg/l nitrate.

Public water systems whose required nitrate loading analysis predicts >five mg/l nitrate or whose well, wellfield, or spring has exceeded five mg/l nitrate must prepare a nitrate management plan, subject to the Department's approval, which seeks to maintain nitrate levels below five mg/l for the subject well in the long-term.

(3) Requirements for all New and Existing Groundwater Sources

(a) Sources for Community Systems. Any person who obtains Department approval for a community public water system that relies entirely upon groundwater sources shall provide additional wells, wellfield, or springs and pumping equipment, or the equivalent, capable of producing the same volumes and quality of water as the system's primary well, wellfield, or spring at all times, or shall provide the storage capacity equivalent to the demand of at least two average days if approved by the Department, unless an interconnection with another public water system has been provided which can adequately provide the quantity and quality of water needed.

(b) Zone I. All suppliers of water shall acquire ownership or control of sufficient land around wells, infiltration galleries, springs and similar sources of ground water used as sources for drinking water to protect the water from contamination. This requirement shall generally be deemed to have been met if all land within Zone I is under the ownership or control of the supplier of water. Current and future land uses within the Zone I shall be limited to those land uses directly related to the provision of the public water system or to other land uses which the public water system has demonstrated have no significant impact on water quality. The Department may require greater distances or permit lesser distances than the Zone I distances set forth at 310 CMR 22.02, if the

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Department deems such action necessary or sufficient to protect public health. No new underground storage tanks for petroleum products shall be located within Zone I

(4) Inspection and Enforcement

(a) Each supplier of water shall annually survey the land uses within Zones I, II and III, or within the Interim Wellhead Protection Area, for each well and wellfield under its control.

(b) A supplier of water shall submit to the Department an annual report that identifies for each well and wellfield under its ownership and control the presence of new land uses within the Zones I, II and III, or within the Interim Wellhead Protection Area, that could adversely impact water quality. The annual reports shall be submitted on Department approved forms by January 31 for the preceding calendar year. The annual reports shall be submitted to the Department's Office of Water Supply at the Regional Office that serves the area where the well, wellfield, or spring is located.

(c) A supplier of water shall notify the local board of health or health department within 48 hours of detection of any violation of a statutory or regulatory requirement that may adversely effect its water supply or distribution system, and shall notify the inspector of buildings, building commissioners or local inspector, or the person charged with enforcement of local zoning and nonzoning controls, within 48 hours of detecting any violation of applicable land use restrictions that may adversely effect its water supply or distribution system. Such notices should include the following information:

1. the name of the person in violation;
2. the location where the violation is occurring;
3. the date when the violation was observed;
4. a description of the violation;
5. the legal citation of the requirement or restriction violated; and
6. a description of the actions necessary to remove

or remedy the violation and the deadlines for taking such actions.

In addition, the supplier of water shall notify the Department's Office of Water Supply at the appropriate Regional Office upon giving any notice required by 310 CMR 22.21(4)(c).

(d) A supplier of water shall take appropriate action to determine whether the violation has been removed or remedied and shall notify the Department's Office of Water Supply at the appropriate Regional Office upon finding that the violation has been removed or remedied.

(5) Variances

(a) The Department may grant a variance from the requirements of 310 CMR 22.21(1)(e) to a proponent that, despite its best efforts, is unable to adopt one or more of the requirements set forth in 310 CMR 22.21(2)(a) and 310 CMR 22.21(2)(b) if the Department finds that strict compliance with such requirements would result in an undue hardship and would not serve to further the intent of 310 CMR 22.21.

(b) The Department shall consider the following factors in making the finding necessary to grant a variance pursuant to 310 CMR 22.21(5):

1. the reasonableness of available alternatives to the proposed well, wellfield, or spring;
2. the overall effectiveness of existing land use controls and other protective measures on the proposed well, wellfield, or spring and any other water supply sources used by the supplier of water;
3. the nature and extent of the risk of contamination to the proposed well, wellfield, or spring that would result from the granting of the variance; and
4. whether the variance is necessary to accommodate an overriding community, regional, state or national public interest.

These factors need not be weighed equally, nor must all of these factors be present for the Department to grant a variance. The presence of



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any single factor may be sufficient for the granting of a variance.

(c) A variance granted pursuant to 310 CMR 22.21(5) shall be conditioned on such monitoring or other requirements as the Department may prescribe.

(d) Requests for variances shall be made in writing and clearly state the provision or requirement from which the variance is sought and the reasons and facts that support the granting of a variance, and shall include an evaluation of the reasonableness of alternatives to the proposed well, wellfield, or spring.

(e) Within 14 days of filing a request for variance under 310 CMR 22.21(5)(a), the person filing the request shall notify persons served by the supplier of water by direct mail and by publication on not less than three consecutive days in a newspaper of general circulation in the service area of the supplier of water. The notice shall include:

1. the provision or requirements from which the variance is being sought;
2. the identity of the proponent of the well, wellfield, or spring;
3. the identity of the person requesting the variance, the address where a copy of the request for variance will be available for public inspection, and the times it will be available; and
4. a statement that the Department will receive written comments concerning the request from the public for a 30 day period commencing on the last date of newspaper publication.

(f) Each person submitting a request for variance shall submit to the Department a copy of the public notice required by 310 CMR 22.21(5)(e) and affidavits attesting to the fact that the notices have been given. The Department will receive written comments concerning the request from the public for a 30 day period commencing on the last date of newspaper publication.

(g) Within 30 days of the close of the comment period, each person requesting a variance under 310 CMR 22.21(5)(a) shall respond in writing to all

reasonable public comments received by the Department.

(h) The Department may schedule a public hearing on any request for variance submitted in accordance with 310 CMR 22.21(5) if it determines on the basis of the public comments received that such a hearing is in the public interest. In the event that the Department schedules a hearing, the person filing the request shall notify persons served by the supplier of water of the hearing by publication on not less than three consecutive days in a newspaper of general circulation in the service area of the supplier of water. In addition, the person filing the request shall notify each person who submitted written comment concerning the request to the Department by direct mail. The person filing the request shall submit to the Department a copy of the public notices required by 310 CMR 22.21(5)(h), and an affidavit attesting to the fact that the notices have been given, prior to the hearing. Persons filing a request for a variance under 310 CMR 22.21(5) shall pay the full the cost of all notifications and public hearing scheduled.

(i) Within 30 days of the grant of a variance under 310 CMR 22.21(5), any person that receives a variance shall notify persons served by the supplier of water of the granting of the variance, including any conditions imposed by the Department, by direct mail and by publication on not less than three consecutive days in a newspaper of general circulation in the service area of the supplier of water. The person that receives the variance shall submit to the Department a copy of the public notices and an affidavit attesting to the fact that the notices have been given upon completion of the public notification.

<General Materials (GM) - References,  
Annotations, or Tables>

Mass. Regs. Code tit. 310, § 22.21

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END OF DOCUMENT

Amended through  
Town Meeting

APRIL 2005

## ZONING BYLAW

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### TOWN OF CONCORD, MASSACHUSETTS



## SPECIAL PROVISIONS

- (b) A plan of the area showing the finished grade and treatment of the site after the proposed completion of the excavation;
- (c) The estimated quantity of materials to be removed and topsoil to be stripped and replaced, together with a detailed statement of the hours and days of operation, the trucking route and type of vehicle to be used on any street for the removal of earth, the treatment of the site during operations to reduce dust and mud and, where appropriate, the proposed form of bond; and
- (d) Such additional information as the Board may determine.

7.5.4.2 If a special permit is granted, the Board shall impose limitations on the time and the extent of the permitted removal and such other appropriate conditions, limitations and safeguards as the Board deems necessary for the protection of the neighborhood and of the public health, safety, convenience and welfare of the Town and may condition the continuance of the permit upon compliance with regulations of the Board then in force or thereafter adopted. The Board shall require sufficient security, including necessary covenants, to insure compliance with the terms, conditions, and limitations of the earth removal permit.

### 7.6 Groundwater Conservancy District

7.6.1 *Definition:* The Groundwater Conservancy District is an overlay district superimposed on existing zoning districts, consisting of those areas within the Town which are delineated on the Groundwater Conservancy District map referred to in subsection 2.2.

7.6.1.1 *Commercial fertilizers:* Any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use, or claimed by its manufacturer to have value in promoting plant growth. Commercial fertilizers do not include unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and gypsum.

7.6.1.2 *Discharge:* The accidental or intentional disposal, deposit, injection, dumping, spilling, leaking, incineration, or placing of toxic or hazardous material or waste upon or into any land or water so that such hazardous waste or any constituent thereof may enter the land or waters of the Commonwealth. Discharge includes, without limitation, leakage of such materials from failed or discarded containers or storage systems and disposal of such materials into any on-site leaching structure or sewage disposal system.

7.6.1.3 *Hazardous material:* A product, waste or combination of substances which because of its quantity, concentration, or physical, chemical, toxic, radioactive, or infectious characteristics may reasonably pose a significant, actual, or potential hazard to human health, safety, welfare, or the environment when improperly treated, stored, transported, used, disposed of, or otherwise managed. Hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious materials, and all substances defined as "toxic" or "hazardous" under Massachusetts General Laws (M.G.L.) Chapter 21C and 21E.

7.6.1.4 *Historical high groundwater table elevation:* A groundwater elevation that is

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determined from local historical data and/or USGS monitoring wells and historical water table fluctuation data.

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

*7.6.1.6 Landfill:* A facility established in accordance with a valid site assignment for the purposes of disposing solid waste into or on the land.

*7.6.1.7 Non-sanitary wastewater:* Wastewater discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage.

*7.6.1.8 Open dump:* A facility established without a valid site assignment for the purposes of disposing solid waste into or on the land.

*7.6.1.9 Septage:* The liquid, solid, and semi-solid contents of privies, chemical toilets, cesspools, holding tanks, or other sewage waste receptacles.

*7.6.1.10 Sludge:* The solid, semi-solid, and liquid residue that results from a process of wastewater treatment or drinking water treatment. Sludge does not include grit, screening, or grease and oil which are removed at the headworks of a facility.

*7.6.1.11 Solid waste:* Useless, unwanted or discarded solid, liquid or contained gaseous material resulting from industrial, commercial, agricultural, municipal or household activities that is abandoned by being disposed or incinerated, but does not include hazardous waste, septage, sludge, waste-water treatment facility residuals or compostable or recyclable materials.

*7.6.1.12 Treatment works:* Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.

*7.6.1.13 Use of toxic or hazardous materials:* The handling, generation, treatment, storage, or management of toxic or hazardous materials.

*7.6.1.14 Very small quantity generator:* Any public or private entity, other than residential, which produces less than 27 gallons (100 kilograms) a month of hazardous waste or waste oil, but not including any acutely hazardous waste.

*7.6.1.15 Waste oil retention facility:* A waste oil collection facility for automobile service stations, retail outlets, and marinas which is sheltered and has adequate protection to contain a spill, seepage, or discharge of petroleum waste products.

### 7.6.2 Purpose

*7.6.2.1* To promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Concord;

## SPECIAL PROVISIONS

7.6.2.2 To preserve and protect the Town's existing and potential sources of public drinking water supplies;

7.6.2.3 To conserve the natural resources of the Town; and

7.6.2.4 To prevent temporary and permanent contamination of the environment.

7.6.2.5 To preserve and protect the existing and potential sources of public drinking water supplies for the towns adjacent to the Town of Concord.

7.6.3 *Applicability:* Within the boundaries of the Groundwater Conservancy District, land use shall be subject to the provisions of this section in addition to the requirements of the underlying district. Where the line of the Groundwater Conservancy District divides a lot, only that portion of the lot within the district shall be subject to the provisions of this section.

7.6.4 *Uses permitted without review by the Board:* The following uses are permitted within the Groundwater Conservancy District:

7.6.4.1 Any extensive use and residential use permitted in the underlying district in which the land is situated, subject to the same use and development regulations as may otherwise apply thereto, whether by right or by special permit, provided that all development, including structural and non-structural activities, are in compliance with Section 7.6 and do not require a special permit as herein after provided in Section 7.6.5;

7.6.4.2 Any institutional use, governmental and utility use, business use and industrial use permitted in the underlying district in which the land is situated, subject to the same use and development regulations as may otherwise apply thereto, whether by right or by special permit, provided,

(a) all development, including structural and non-structural activities are in compliance with Section 7.6 and do not require a special permit as hereinafter provided in Section 7.6.5; and,

(b) the maximum lot coverage by the total ground area covered by the principal and accessory structures and all paved areas does not exceed 15 percent or 2,500 square feet per lot, whichever is greater.

7.6.5 *Uses permitted subject to review by the Board:* The following uses may be permitted by special permit by the Board after notice and a public hearing:

7.6.5.1 Any institutional use, governmental and utility use, business use and industrial use permitted under Section 7.6.4.2 which exceeds the maximum lot coverage permitted under Section 7.6.4.2(b) provided, in part, that the proposed lot coverage does not exceed the maximum permitted in the underlying district.

7.6.5.2 Storage of sludge and septage;

## CONCORD ZONING

7.6.5.3 Storage of roadway de-icing chemicals, such as calcium chloride, chemically treated abrasives, or other chemicals and the storage of chemical fertilizers or pesticides in quantities greater than those associated with normal household use.;

7.6.5.4 Open air or unenclosed storage of animal manure;

7.6.5.5 Storage of liquid hazardous materials and/or liquid petroleum products when such materials or products are not stored above-ground, on an impervious surface and in a container within a building, or outdoors in covered containers designed and operated to provide secondary containment of such materials or products.

7.6.5.6 The replacement of underground storage tanks or systems for the keeping, dispensing or storing of petroleum products;

7.6.5.7 Floor drains in an industrial or commercial facility and/or a petroleum, toxic, or hazardous materials and/or waste storage area;

7.6.5.8 On-site subsurface disposal which requires a minimum design flow under Title V in excess of four hundred and forty (440) gallons per day per acre.

7.6.5.9 Any alteration of a structure served by a failed septic system when such alteration is part of the work required to address the failed septic system.

7.6.5.10 Any use permitted in the underlying district in which the land is situated, subject to the same use and development restrictions as may otherwise apply thereto, provided that the land designated as being within the Groundwater Conservancy District is found by the Board not, in fact, to be within an area contributing to drinking water resources;

7.6.6 *Prohibited uses:* The following uses and activities are prohibited within the Groundwater Conservancy District:

7.6.6.1 Uses prohibited under Section 4.7.1;

7.6.6.2 Auto service station with underground storage tanks;

7.6.6.3 Private sanitary landfills and open dumps;

7.6.6.4 Commercial car washes not connected to the municipal sewer system;

7.6.6.5 Commercial and coin-operated laundries and dry-cleaning establishments (where dry-cleaning is done on-site) not connected to the municipal sewer system;

7.6.6.6 Sludge and septage landfills;

7.6.6.7 Storage and/or disposal of chemically treated snow and ice that have been removed from highways and roadways outside the Groundwater Conservancy District;

## SPECIAL PROVISIONS

7.6.6.8 Petroleum, fuel oil and heating oil bulk stations and terminals, other than propane tanks;

7.6.6.9 Facilities for the treatment or disposal of non-sanitary wastewater are prohibited within the Groundwater Conservancy District, with the following exceptions:

- (a) Replacement or repair of an existing system is exempt if the existing design capacity is not exceeded;
- (b) Treatment works approved by the Department of Environmental Protection (DEP) and designed for the treatment of contaminated ground or surface waters and operated in compliance with DEP regulations; and
- (c) Publicly owned treatment works.

7.6.6.10 Facilities that generate, treat, store, or dispose of hazardous waste are prohibited within the Groundwater Conservancy District, with the following exceptions:

- (a) Very small quantity generators;
- (b) Household hazardous waste collection centers or collection events;
- (c) Waste oil retention facilities; and
- (d) Treatment works for the restoration of contaminated ground or surface waters.
- (e) Hospitals and other medical facilities in existence and licensed as such by the Department of Public Health, and identified by the Department of Environmental Protection as a "small quantity generator of hazardous waste."

7.6.6.11 Removal of soil, loam, sand, gravel, or any other mineral substances within four feet of the historical high groundwater table elevation is prohibited within the Groundwater Conservancy District, with the following exceptions:

- (a) Substances which are removed and redeposited (or suitable alternative material deposited) within 45 days of removal on site to achieve a final grade equal to preexisting ground contours or greater than four feet above the historical high water mark; and
- (b) Excavations for the construction of residential building foundations and other structures accessory to the principal residential use and the installation of utilities.

7.6.6.12 Any expansion of a structure served by a failed septic system, unless such expansion is required to address the failed septic system.

### 7.6.7 *Procedure for review by the Board*

7.6.7.1 Any person who desires to use land within the Groundwater Conservancy District for a use permitted subject to review by the Board shall submit a written application for a special permit to the Board, with copies to the Planning Board, Public Works Commission, the Natural Resources Commission and the Board of Health. Each such application shall be accompanied by the following submissions:

## CONCORD ZONING

- (a) A complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;
- (b) For those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Fire Department, and Board of Health. The plan shall include:
  - i. Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;
  - ii. Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces; and
  - iii. Evidence of compliance with any local, state and/or federal regulations.
- (c) Proposed down-gradient location(s) for groundwater monitoring well(s), should the Board deem the activity a potential groundwater threat.

7.6.7.2 The Planning Board, Public Works Commission, the Natural Resources Commission and Board of Health shall submit to the Board written recommendations including an evaluation that the project:

- (a) Minimizes any adverse effects to the existing or potential quality or quantity of water that is available in the Groundwater Conservancy District;
- (b) Is designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed;
- (c) Provides a system of artificial recharge of precipitation that will not result in the degradation of groundwater quality; and
- (d) Where a portion of the lot is located partially outside the Groundwater Conservancy District, site design shall, to the extent feasible, locate potential pollution sources, such as on-site disposal systems, outside the district boundaries.

7.6.7.3 If a special permit is granted, the Board shall impose such conditions and safeguards as public safety, welfare and convenience may require. The Board shall give due consideration to the reports of the Planning Board, Natural Resources Commission, Public Works Commission and the Board of Health, and where the decision of the Board differs from the recommendations of the Planning Board, the Public Works Commission, the Natural Resources Commission, or the Board of Health, the reasons therefor shall be stated in writing.

### 7.7 Off-street Parking, Loading, and Site Plan Requirements

7.7.1 *Purpose:* The purpose of this section is to ensure that all uses be provided with sufficient off-street parking and loading facilities to meet the needs of persons employed at or having commerce at such uses; to ensure that off-street parking and loading facilities are



## **ADMINISTRATION AND ENFORCEMENT**

### **11.7 Variance**

A variance from the specific requirements of this Bylaw, including a variance authorizing a use or activity not otherwise permitted in a particular zoning district, may be authorized by the Board only where, after notice and a public hearing, the Board specifically finds that, owing to circumstances relating to the soil conditions, shape or topography of land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Bylaw. The Board may impose such conditions, safeguards and limitations, both of time and of use, as it deems appropriate upon the grant of any variance. Any rights authorized by a variance which are not exercised within one (1) year from the date of grant of such variance shall lapse and may be reestablished only after notice and a new hearing pursuant to this subsection.

### **11.8 Bylaw Construction**

This Bylaw shall not interfere with or annul any other Town Bylaw, rule or regulation, which is more restrictive, except where this Bylaw is more restrictive, it shall control.

### **11.9 Validity and Separability**

The invalidity of one or more sections, subsections, sentences, clauses or provisions of this Bylaw shall not invalidate or impair the Bylaw as a whole or any other part hereof.

# Hanscom Area Wellhead Protection Zones

EXHIBIT E



**TOWN OF CONCORD  
GROUNDWATER PROTECTION BYLAW**

**VOTED:** That the Town, acting under the provisions of Article II of the Amendments to the Constitution of the Commonwealth of Massachusetts, commonly called the Home Rule Amendment, and under the Town's statutory police powers, adopt the following bylaw regarding the protection of groundwater.

**Section 1. Authority**

This bylaw is adopted by the Town of Concord under its home rule powers, its police powers to protect the public health and welfare, and its authorization under MGL Chapter 40, §21.

**Section 2. Purpose**

The purpose of this bylaw is to protect, preserve and maintain the existing and potential groundwater supply and groundwater recharge areas within the Town.

**Section 3. Definitions**

The following terms shall have the following meanings in the bylaw.

- a. "Discharge" means the disposal, deposit, injection, dumping, spilling, leaking, incineration or placing of any hazardous material, regardless of volume into or on any land or water so that such hazardous material or any constituent thereof may enter the environment to be emitted into the air or discharged into any waters including groundwaters. Discharge includes, without limitation, leakage of such hazardous or toxic material from failed or discarded containers or storage systems, and disposal of such materials into any on-site sewage disposal system, drywell, catch basin or landfill.
- b. "Hazardous Material" means a product or waste, or combination of substances which because of its quantity, concentration, or physical, chemical or infectious characteristics, poses in the Board of Health's judgment a substantial present or potential hazard to human health, safety or welfare or to the environment when improperly treated, stored, transported, used or disposed of, or otherwise managed. Without limiting the generality of the foregoing, any substance deemed a hazardous waste in 315 Code of Massachusetts Regulations 2.04 or in 40 Code of Federal Regulations Part 261 shall be deemed a hazardous material for purposes of this bylaw.

Wastes generated by but not limited to the following activities are presumed to be toxic or hazardous, unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary to the satisfaction of the Board of Health:

airplane, boat and motor vehicle service and repair

- chemical and bacteriological laboratory operation
- cabinet making
- dry cleaning
- electronic circuit assembly
- metal plating, finishing and polishing
- painting, wood preserving and furniture striping
- pest control
- photographic processing
- printing
- and such other activities as may reasonably be determined by the Board of Health.

#### **Section 4. Prohibitions**

a.

- (i) Except as provided in Section 4 b. hereof, all discharges of hazardous material within the Town are prohibited.
- (ii) All handling and storage of hazardous material is prohibited except in accordance with the provisions of this bylaw, the Massachusetts Hazardous Waste Management Act, MGL Chapter 21C, as amended and the Resource Conservation and Recovery Act, P.L. 94-580, as amended and regulations issued incident thereto.

b. Section 4 a. shall not apply to the following discharges.

- (i) Proper disposal of any non-hazardous material in a sanitary or industrial landfill that has received and maintains all necessary federal, state and Town permits for such purpose; provided that all current permits have been filed with the Concord Board of Health.
- (ii) Application of fertilizer and pesticides in accordance with label recommendations and with applicable regulations of the Massachusetts Pesticide Control Board and the U.S. Environmental Protection Agency.
- (iii) Application of road salts in conformance with the snow and ice control program of the Massachusetts Department of Public Works and the Concord Department of Public Works.

- (iv) Disposal of "sanitary sewage" to subsurface sewage disposal systems as defined and permitted by Title 5 of the Massachusetts Environmental Code and the supplemental rules and regulations issued by the Concord Board of Health.
- (v) Industrial discharges which are point source discharges subject to existing valid permits under S401 of the federal Water Pollution Control Act of 1967 as amended.

#### **Section 5. Storage Controls at Industrial and Commercial Sites**

- a. Every owner or operator of a commercial, agricultural, horticultural or industrial establishment, including home businesses, storing toxic or hazardous materials in quantities totaling more than 10 gallons liquid volume or 10 pounds dry weight shall register with the Board of Health the types of materials stored, quantities, location and method of storage. An inventory of such materials shall be maintained on the premises and be reconciled with purchase, use, sales and disposal records on a monthly basis, in order to detect any product loss.

Registration required by this subsection shall be submitted within 60 days of the effective date of this bylaw, and annually thereafter. Maintenance and reconciliation of inventories shall begin within the same 60-day period.

- b. Wastes containing toxic or hazardous materials shall be held on the premises in product-tight containers for removal by a licensed carrier and for disposal in accordance with the Massachusetts Hazardous Waste Management Act, MGL, Chapter 21C, as amended.
- c. The Board of Health may require that containers of toxic or hazardous materials be stored on an impervious, chemical resistant surface compatible with the material being stored, and that the storage area be enclosed with a permanent dike of impermeable construction.
- d. This section does not apply to storage or activities permitted or licensed in accordance with Administrative Policies and Procedures for storage of inflammable materials and explosives (APP #22) as amended, and issued by the Concord Board of Selectmen on February 22, 1980. [**Editor's Note:** APP #22 revised 6/19/80]

#### **Section 6. Special Permits**

Any owner or operator of a commercial or industrial establishment or any person who desires to engage in discharges within the Town other than those discharges permitted pursuant to Section 4 b. (i) through 4 b. (v) hereof may petition the Board of Health in writing for permission to do so. Within six months of the effective date of this bylaw, the Board of Health shall adopt regulations to administer this bylaw, but nothing in this bylaw or in any such regulations shall be construed by implication or otherwise to impose upon the Board of Health any obligation to permit any discharges other than those specifically permitted by Sections 4 b. (i) through 4 b. (v) hereof.

#### **Section 7. Filings Required**

Every owner or operator of a commercial or industrial establishment or any person within the Town whose operations are subject to any of the following acts shall file with the board copies of all permit applications and supporting data filed pursuant thereto as well as all permits obtained, notices of approval, denial, revocation and citations for violations in respect thereof and shall provide the board with such additional information as the board shall by rule from time to time require:

- a. the Resource Conservation and Recovery Act 42 U.S.C. S6901 et seq.
- b. the Federal Clean Air Act 42 U.S.C. S1857 et seq.
- c. the Federal Clean Water Act 33 U.S.C. S1251 et seq.
- d. the Toxic Substance Control Act 15 U.S.C. S2601 et seq.
- e. the Safe Drinking-Water Act 42 U.S.C. S300f et seq.
- f. the Federal Insecticide, Fungicide and Rodenticide Act
- g. the Massachusetts Hazardous Waste Management Act, MGL, Chapter 21C as amended, and other Massachusetts counterpart statutes to the federal acts listed in sub-paragraphs a. through f. above.
- h. the Massachusetts Clean Water Act, MGL, Chapter 21, §26 et seq.

### **Section 8. Report of Spills and Leaks**

Every person having knowledge of a spill, leak or other loss of hazardous materials shall immediately report the spill or loss of same to the Board of Health and Fire Department.

### **Section 9. Enforcement**

- a. The provisions of this bylaw and regulations adopted hereunder shall be enforced by the Board of Health. The agent or designated representative of the Board of Health may, according to law, enter upon any premises at any reasonable time to inspect for compliance.
- b. Upon request of the agent or designated representative of the Board of Health, the owner or operator of any premises at which hazardous materials are used or stored shall furnish all information required to monitor compliance with this bylaw and regulations adopted hereunder including a complete list of all chemicals, pesticides, fuels and other hazardous materials used or stored on the premises, their volumes and concentrations, a description of measures taken to protect storage containers from vandalism, corrosion and spillage, and the means of disposal of all toxic or hazardous wastes produced on the site. A sample and analysis of wastewater disposed to on-site septic systems, drywells or sewage treatment systems may be required by the agent or designated representative of the Board of Health.

- c. A current (not more than 2 years old) written plan for dealing with potential spillage, leakage, or loss of hazardous materials used or stored on one's premises shall be filed with the Board of Health.
- d. All records pertaining to storage, removal and disposal of hazardous wastes shall be retained for no less than 10 years, and shall be made available for review by the agent or designated representative of the Board of Health upon request.
- e. The Building Inspector of the Town of Concord shall condition issuance of building and occupancy permits upon conformity with the requirements of this bylaw and regulations adopted hereunder respecting any hazardous materials to be used in the course of such construction or occupancy.

#### **Section 10. Violation**

- a. Written notice of any violation of this bylaw and regulations adopted hereunder shall be given by the agent or designated representative of the Board of Health, specifying the nature of the violation; any corrective measures that must be undertaken, including containment and cleanup of discharged materials; any preventive measures required for avoiding future violations; and a time for compliance. Requirements specified in such notice shall be reasonable in relation to the public health hazard involved and the difficulty of compliance.
- b. Any violation of this bylaw shall be punishable by a fine of up to \$200 (two hundred dollars) for each day of violation, and the Town of Concord may enforce the same remedy available to the Commonwealth for any such similar violation.

#### **Section 11. Severability**

Each provision of this bylaw shall be construed as separate, to the end that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.

Article 42, Town Meeting, April 1981