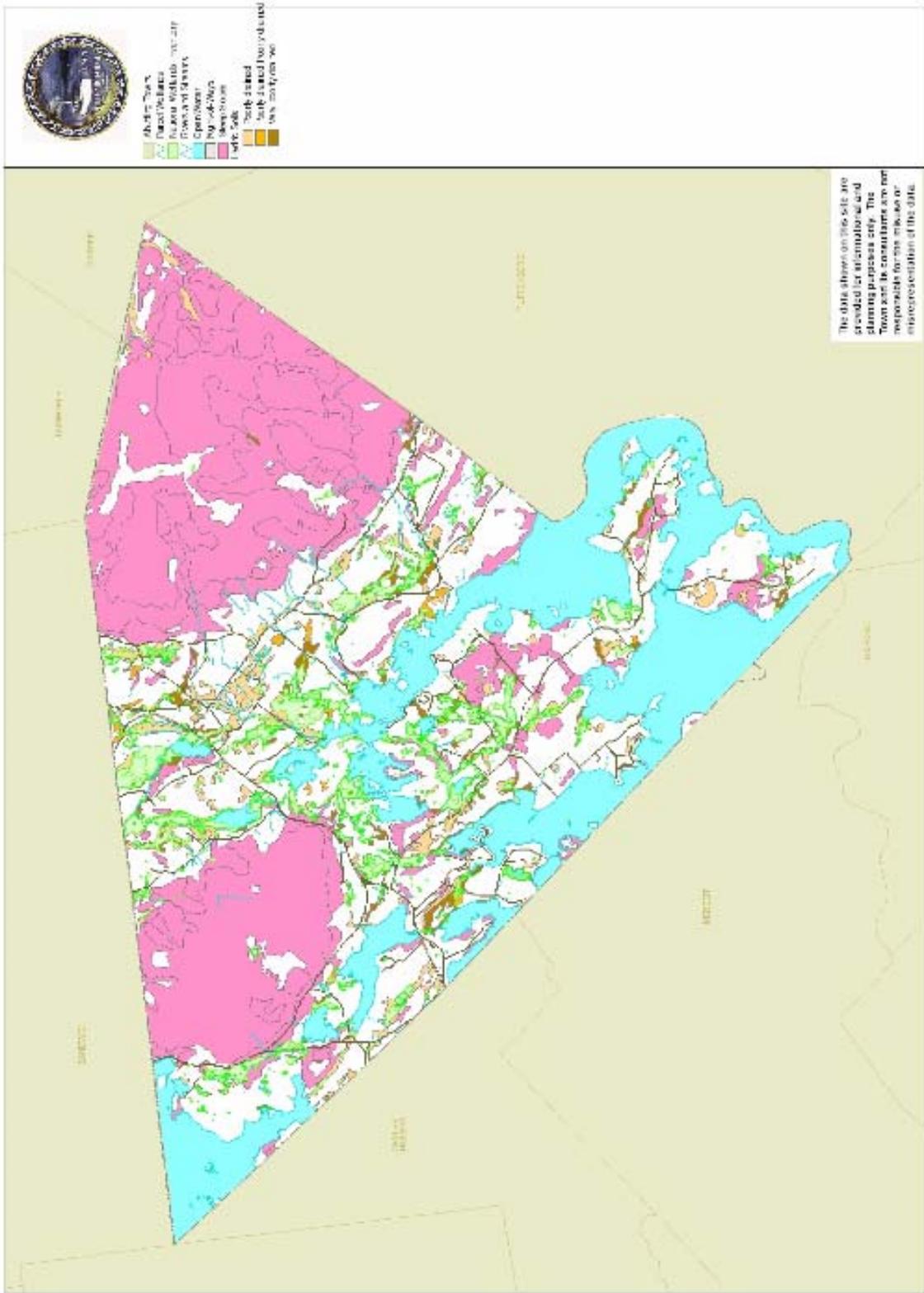


# APPENDIX B

## NATURAL RESOURCES INFORMATION

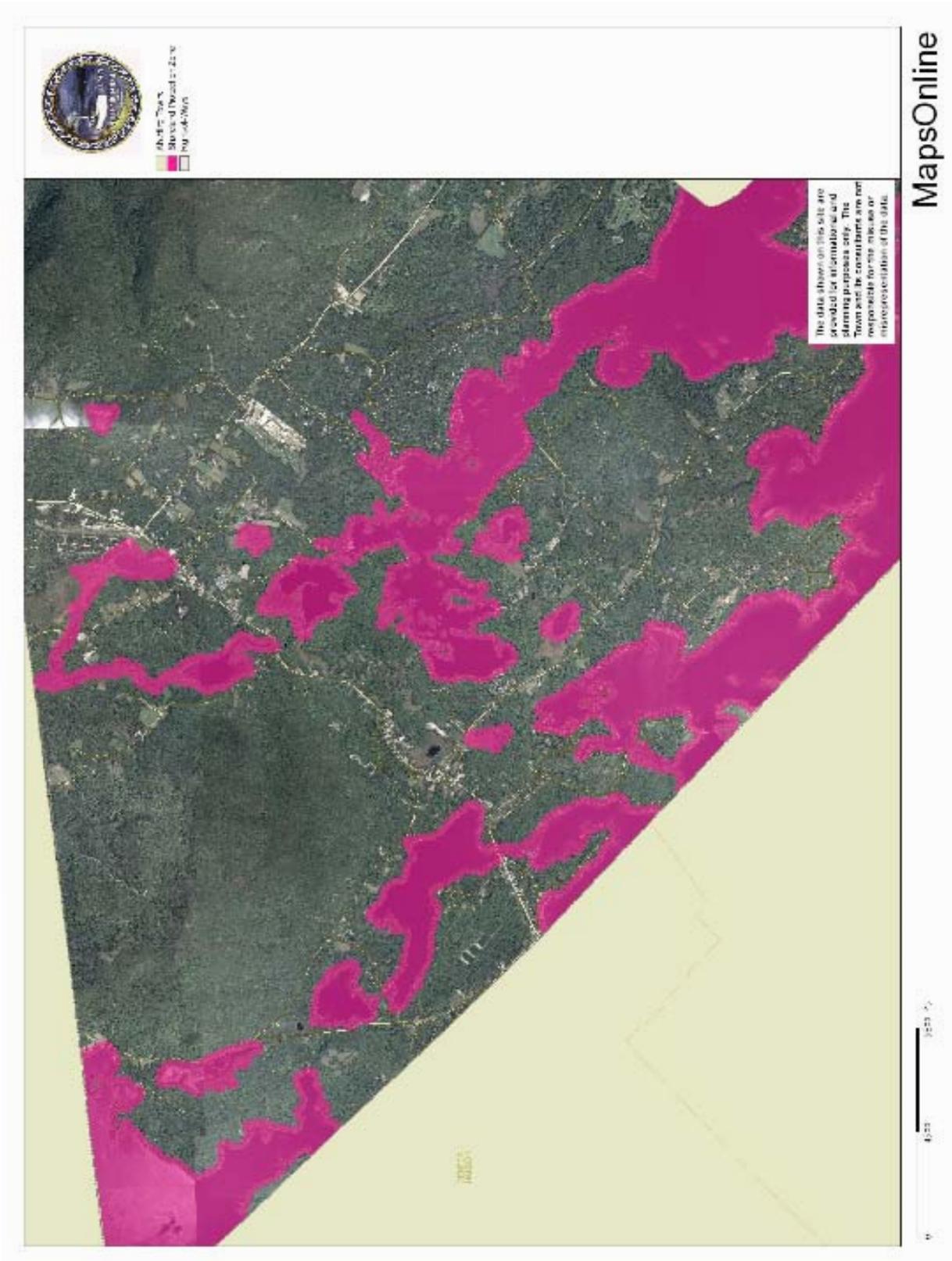
⌘	MAP #1: NATURAL RESOURCES.....	B-1
⌘	MAP #2: SHORELAND ZONE.....	B-2
⌘	MAP #3: TOPOGRAPHY .....	B-3
⌘	INNOVATIVE LAND USE CONTROLS.....	B-4

# Map #1: Natural Resources



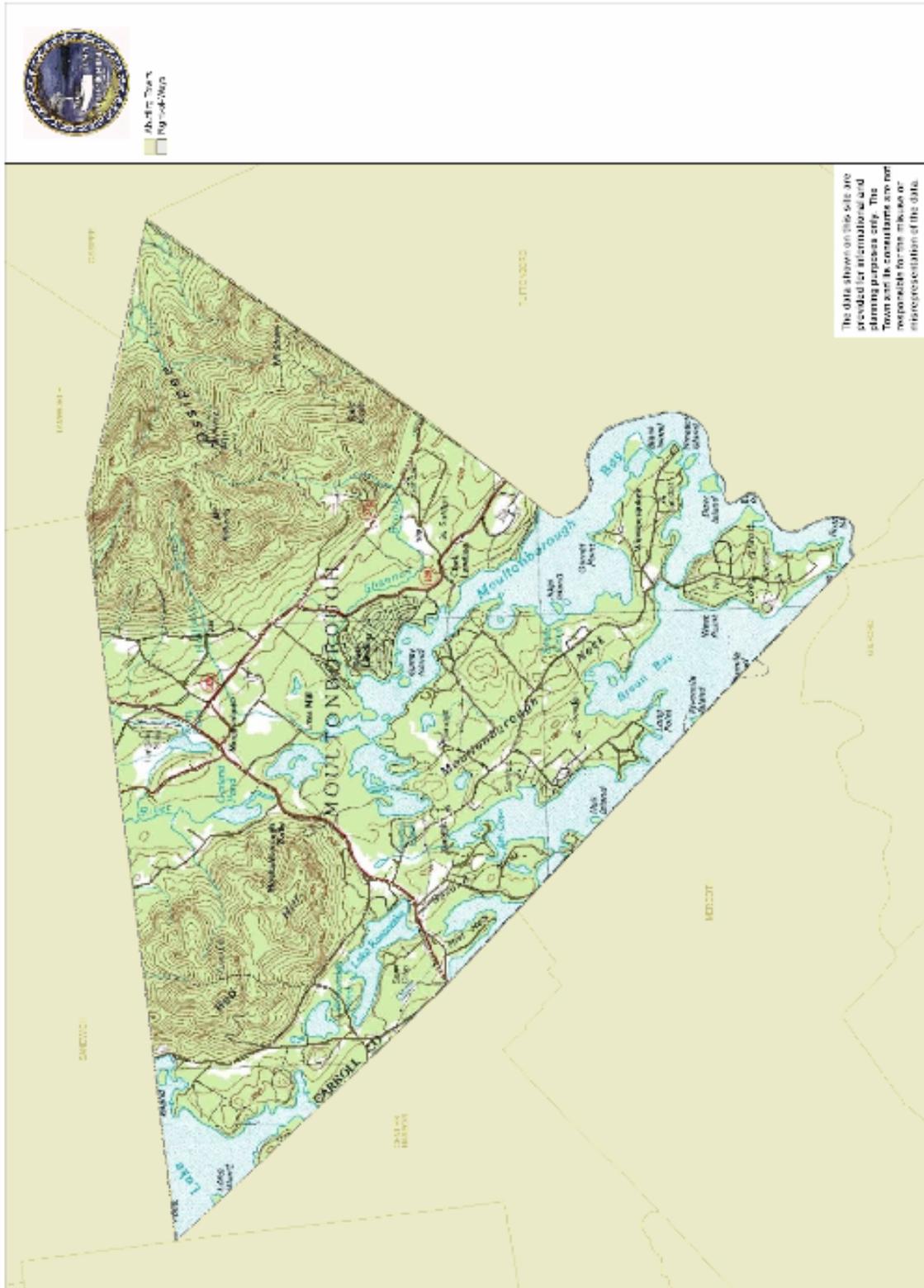
MapsOnline

## Map #2: Shoreland Zone



MapsOnline

# Map #3: Topography



MapsOnline

# 1. Innovative Land Use Controls authorized by RSA 674:21.<sup>1</sup>

In 1981, the legislature initially gave municipalities a list of innovative land use controls, which it has expanded from time to time, to assist them in dealing with growth and related land use issues and which provide a number of land use control options for municipalities. Innovative land use controls may include, but are not limited to:

- (a) timing incentives;
- (b) phased development;
- (c) intensity and use incentives;
- (d) transfer of development rights;
- (e) planned unit development;
- (f) cluster development;
- (g) impact zoning;
- (h) performance standards;
- (i) flexible and discretionary zoning;
- (j) environmental characteristics zoning;
- (k) inclusionary zoning;
- (l) accessory dwelling unit standards;
- (m) impact fees; and
- (n) village plan alternative subdivisions.

Some of the innovative land use controls listed in the statute were already available under traditional zoning; however, the 1991 act certainly resolved any doubts concerning the availability of all of these methods. While there was some question as to whether innovative controls, such as planned unit developments or cluster developments, could be required, any doubt about a municipality's ability to impose such provisions (when supported by the Master Plan) was resolved by Laws 2004, ch.72. Both subdivision and site plan regulations may be expanded to require innovative land uses when supported by the Master Plan."<sup>2</sup>

## 2. Stormwater Management:

Stormwater management requirements are best addressed through a performance-based zoning ordinance. Zoning is the appropriate means of addressing stormwater for the purpose of 'promoting the health, safety, or the general welfare of the community' (RSA 674:16) and 'to assure proper use of natural resources' (RSA 674:17).

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<sup>1</sup> NH Department of Environmental Services web site, Regional Environmental Planning Program, Innovative Land Use Planning Techniques Guide, accessed 4/10/08.

<sup>2</sup> Loughlin, Peter J., New Hampshire Practice: Land Use Planning and Zoning, Third edition, 2007 Cumulative Supplement, LexisNexis, Library of Congress Card Number: 00-063561.

A performance-based approach (authorized under RSA 674:21) allows the community to specify the desired outcome or performance required by any development activity without being overly prescriptive regarding the specific techniques or approaches used. A zoning ordinance is also the appropriate means for addressing several issues affecting stormwater management, such as lot usage, density, location of building, and vegetative cover.

Although many larger sites are subject to state and federal stormwater management requirements, a local zoning ordinance provides the municipality a way to act independently from state and federal officials to address any problems on the site or local water quality impacts. In addition, many building lots are too small to be subject to federal or state stormwater regulations. A local zoning ordinance ensures that all development activity must comply with the stormwater management requirements, including projects not subject to state or federal regulations and individual building lots that are not subject to subdivision or site plan review. Stormwater management requirements that apply to any individual building site that does not go through subdivision or site plan review are enforceable at the building permit stage and by a code enforcement officer.”<sup>3</sup>

### 3. Drinking Water:

Department of Environmental Services (DES) has primary authority to regulate public drinking water systems in the state under both the federal and state Safe Drinking Water Acts. The federal Safe Drinking Water Act applies to every public water system in the United States but does not regulate private wells. The 1996 amendments to the Act greatly enhance the existing law by recognizing source water protection, operator training, funding for water system improvements, and public information as important components of safe drinking water protection.

The New Hampshire Safe Drinking Water Act (RSA 485:3) establishes authority for DES to adopt drinking water rules and primacy water standards, which apply to all public drinking water systems for the protection of public health. Through its Drinking Water Source Protection Program, DES provides guidance and assistance to water suppliers and municipalities to protect groundwater and surface water sources for public water systems. The program emphasizes prevention of contamination of drinking water through better management of potential contamination sources, land conservation, local land use controls, and public education.

The New Hampshire Groundwater Protection Act (RSA 485-C) was adopted to protect the natural quality of the groundwater resources of the state for drinking water supply. This is accomplished by assisting local ground water protection efforts and by establishing procedures and standards for the classification and remediation of groundwater affected by regulated contaminants. DES developed and adopted N.H. Code

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<sup>3</sup> NH Department of Environmental Services (DES), Regional Environmental Planning Program (REPP), Environmental Characteristics Zoning Chapter, Stormwater Management, web site accessed 4/10/08.

of Administrative Rules Part ENV-Wq 401 Best Management Practices for Groundwater Protection, which apply to all potential contamination sources in the state. The Best Management Practices BMPs in the rules are essentially common-sense structural and operating practices that should be adopted by all entities that use regulated substances (e.g. oil, regulated contaminants) as defined in Env-Wq 401. The purpose of the Best Management Practices (BMPs) is to help prevent a release of regulated substance, particularly into a high value water source.

DES has developed guidance to help implement local water supply protections including the Model Rule for the Protection of Water Supply Watersheds (2000) and the Model Groundwater Protection Ordinance (2006). DES guidance provides a starting point for the development of local land use controls and management programs designed to address the human activities that can be a source of contamination. This guidance is designed to enhance local planning and regulatory strategies to protect groundwater and surface water supplies and consider the most effective and practical protection approach.”<sup>4</sup>

## 4. Erosion & Sediment Control:

“RSA 674:44, Site Plan Review Regulations, Subpart II, states: ‘The site plan review regulations which the planning board adopts may: a) Provide for the safe and attractive development or change or expansion of use of the site and guard against such conditions as would involve danger or injury to health, safety, or prosperity by reason of: (1) Inadequate drainage or conditions conducive to flooding of the property of another; (2) Inadequate protection for the quality of the groundwater; (3) Undesirable and preventable elements of pollution such as noise, smoke, soot, particulates, or any other discharge into the environment which might prove harmful to persons, structures, or adjacent properties.

RSA 674:36, Subdivision Regulations, Part II, states: ‘The subdivision regulations which the planning board adopts may; (a) provide against such scattered or premature subdivision of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage.... or necessitate the excessive expenditure of public funds for the supply of such services.”<sup>5</sup>

The federal government protects surface water from stormwater discharges via the National Pollutant Discharge Elimination System (NPDES) that is administered by the U.S. Environmental Protection Agency (EPA). The 1987 Amendments to the Clean Water Act (CWA) resulted in the development of Phase 1 of the NPDES Stormwater Program in 1990. The program addressed sources of stormwater runoff that had the greatest potential to negatively impact water quality. Under Phase 1, stormwater

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<sup>4</sup> DES, REPP, Environmental Characteristics Zoning Chapter, Water Resources Protection, Drinking Water, web site accessed 4/10/08.

<sup>5</sup> DES, REPP, Environmental Characteristics Zoning Chapter, Water Resources Protection, Erosion and Sediment Control, web site accessed 4/10/08.

discharges from eleven categories of industrial activity, which included construction activity that disturbs five or more acres of land.

The Phase II Final Rule (Federal Register December 8, 1999) expanded the NPDES coverage for stormwater discharges and included construction activity disturbing between 1 and 5 acres of land. Any construction activity that will, or is part of a “common plan” of development or sale, that will disturb one or more acres and has the potential to have a discharge of stormwater to a water of the United States must either have a permit or have qualified for a waiver.<sup>6</sup>

New Hampshire law protects surface and groundwater quality from degradation as a result of significant alteration of terrain and activities in or on the borders of surface waters of the state. RSA 485-A: 17 Water Pollution and Waste Disposal/Terrain Alteration requires a site specific permit from the DES when more than 100,000 square feet of contiguous land area is to be disturbed (or 50,000 square feet if within the protected shoreland as defined by the Comprehensive Shoreland Protection Act.)<sup>7</sup>

## 5. Local Control of Erosion & Sediment Discharges to Surface Waters:

Many New Hampshire towns, including Exeter, Portsmouth, and East Kingston, have developed erosion and sediment control regulations that typically deal with requirements for erosion and sediment control during and after construction. These regulations are not fully effective however, if the pre-application clearing of land is not addressed, and if inspection prior to, during, and after construction is not addressed, as well as issues of maintenance during construction and after storm events.

The best regulations will be ineffective without accompanying methods referenced for enforcement. The reader is encouraged to consult RSA 676:15, 17 and the publication “Guide to District Court Enforcement of Local Ordinances and Codes” available from the NH Bar Association.<sup>8</sup>

## 6. Wildlife Protection and Open Space Preservation:

Environmental Characteristics Zoning. RSA 674:21: Although not specifically defined, this provision gives planning boards the authority to adopt an innovative land use control based upon the environmental characteristics as shown in a local or regional natural

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<sup>6</sup> EPA, NPDES, Phases of the NPDES Stormwater Program, website accessed 5/6/08.

<sup>7</sup> DES, REPP, Environmental Characteristics Zoning Chapter, Erosion and Sediment Control, web site accessed 4/10/08.

<sup>8</sup> DES, REPP, Environmental Characteristics Zoning Chapter, Erosion and Sediment Control (synopsis of local control issues), web accessed 4/10/08.

resources mapping and inventory project. Examples of environmental characteristics could include aquifers, wetlands, unfragmented forest blocks, or specific habitat types such as grasslands or forest types.

Village Plan Alternative Subdivision. RSA 6 74:21: This section defines village plan alternative as ‘an optional land use control and subdivision regulation to provide a means of promoting a more efficient and cost effective method of land development. The village plan alternative’s purpose is to encourage the preservation of open space and more efficient use of land.’

Master Plan; Purpose and Description. RSA 674:2: This section states that a Master Plan may include the following section: (subpart(d)) ‘a natural resources section which identifies and inventories any critical or sensitive areas or resources, not only those in the local community, but also those shared with abutting communities. This section provides a factual basis for any land development regulations that may be enacted to protect natural areas.’

Subdivision Regulations. RSA 674:361(l) and (m): This section gives the planning board the authority to adopt subdivision regulations which ‘provide for efficient and compact subdivision development that promotes retention and public usage of open space and wildlife habitat, by allowing for village plan alternative subdivision’ and ‘require innovative land use controls on lands when supported by Master Plan.’

Comprehensive Shoreland Protection Act. RSA 483-B: 2: This section states that the standards set forth in the chapter shall serve to ‘protect fish spawning grounds, aquatic life, and bird and other wildlife habitats’ and promote wildlife habitat, scenic beauty, and scientific study.’<sup>9</sup>

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<sup>9</sup> DES, REPP, Environmental Characteristics Zoning Chapter, Wildlife Habitat Management, web site accessed 4/10/08.