

## SECTION XII WETLANDS CONSERVATION **OVERLAY** DISTRICT (**OVERLAY**)

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**12.1 PURPOSES AND INTENT** The purpose of this section is to protect the public health, safety and general welfare by controlling and guiding the use of land areas which have been found to be subjected of high water tables for extended periods of time. Its further purposes are to control the development of structures and land uses on naturally occurring wetlands which will contribute to pollution of surface and groundwater by sewage or toxic substances; prevent the destruction of, or significant changes to, natural wetlands which provide flood protection; protect unique and unusual natural areas; protect wildlife habitats and maintain ecological balances; protect potential water supplies and existing aquifers (water-bearing stratum) and aquifer recharge areas, and prevent the expenditure of municipal funds for the purposes of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands.

**12.2 AREA DISTRICT BOUNDARY** The Wetlands Conservation **Overlay** District is defined as those areas delineated as very poorly and poorly drained soils by the US Department of Agriculture (**USDA**) **Natural Resource Conservation Service (NRCS)**, ~~Soil Conservation Service~~ in the Soil Survey of Merrimack County, New Hampshire. The Wetlands Conservation **Overlay** District also includes those areas such as swamps, marshes, and bogs that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation adapted for life in saturated soil conditions, such as those species designated as obligate or facultative wetland plants in the lists of the ~~Natural~~ **National Wetlands Inventory (NWI)** of the US Fish and Wildlife Service (**FWS**).

~~**12.3 LIMITATIONS** The limits of the Wetlands Conservation District are hereby determined to be areas of one acre or more in size, or of any size if contiguous to surface waters such as lakes, ponds and streams, subjected to high water tables for extended periods of time and includes, but are not necessarily limited to, all such areas delineated as wetlands by on-site mapping. No person shall fill areas occupied by swamps, streams or lakes, except as provided by the New Hampshire Statutes.~~

**12.43 WETLAND DELINEATION** It shall be the responsibility of the applicant for a permit to delineate those areas of the property which exhibit the wetland characteristics as described in ~~Section 12.6~~ of this Ordinance. The wetland shall be delineated on the plan, and the plan shall be signed and stamped by a certified soil scientist ~~and~~ **or** certified wetland scientist.

In the event there are no wetlands on the property, the plans shall so state and be signed and stamped by a certified soil scientist ~~and~~ **or** certified wetland scientist. The Planning Board may waive the requirements of this section if, in its opinion, the wetlands do not significantly affect the intent of this Ordinance.

Any necessary mapping, soil testing or other work for delineating the wetland areas shall be done at the cost of the applicant.

**12.4 WETLAND BUFFER** The Wetlands Conservation **Overlay** District shall include an undisturbed protected upland area of \_\_\_\_\_ feet adjacent to wetlands and surface waters. (A majority of the Wetlands Working Group recommends 25 feet. Conservation Commission recommends 50 feet. Planning Board to decide.)

**12.5 RELATIONSHIP TO OTHER DISTRICTS** Where the Wetlands Conservation **Overlay** District is superimposed over another zoning district, the more restrictive regulations shall apply.

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**12.6 WETLAND AREA CHARACTERISTICS** Wetlands are areas where a significant part of the vegetational community and soil and land types consist of, but do not necessarily include all, of the following:

**12.6.1 Swamps:** Swamps are areas where the water table is at or near the ground surface for a significant part of the year. The vegetational community consists mostly of trees and woody shrubs, such as:

Alders	Poison Sumac	
Arrow-wood	Red Maple	
Atlantic White Cedar	Rhodora	
Black Ash	Sphagnum Moss	
Black Gum	Spicebush	
Black Spruce	Sweet Pepperbush	
Buttonbush	Tamarack (Larch)	
Common Elder	Willows	
High-bush Blueberry	Winterberry	
Marsh Rose		

**12.6.2 Marshes:** Marshes are treeless wetlands dominated by soft-stemmed herbaceous plants. The surface of the marsh is covered with water year-round, though seasonal fluctuations in water depth are expected. Marshes range from the wet meadows variety to deep marshes which can be covered with several feet of water. The vegetational community is made up of some or all of the following:

Arums	Leatherleaf	
Bladder Worts	Pickerel Weeds	
Bur-reeds	Rushes	
Cat-tails	Sedges, including Bulrushes	
Duckweeds	Cotton-grasses and Wool-grasses	
Eelgrass	Smartweeds	
Frog's-bits	Sweet Gale	
Horsetails	Water-lilies	
Hydrophyllus Grasses	Water Milfoil	

**12.6.3 Bogs:** Bogs consist of peat or muck deposits of significant depths and are characterized by a distinct group of trees and plants which are adapted to the bog's highly acidic conditions. The water in a bog is practically devoid of oxygen and nutrients. Bogs usually develop in undrained glacial depressions. Typical plants are:

Atlantic White Cedar	Pale Laurel	
Black Spruce	Pitcher-plants	
Bladder Worts	Rhodora	
Bogbean or Buckbean	Sedges	
Bog-laurel	Sheep Laurel	
Bog-rosemary	Sphagnum Moss	
Cotton Grass	Sundews	
High-bush Blueberry	Sweet Gale	
Leatherleaf		

**12.6.4 Very Poorly Drained Soils:** Soil series and land types commonly associated with wetlands, as described by the Soil Survey of Merrimack County, New Hampshire, include the following "very poorly drained" soils:

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Marsh (Mh)	Saco (Sa)	
Mixed Alluvial (Mn)	Scarboro (Sc)	
Muck and Peak (MU)		

**12.6.5 Poorly Drained Soils:** Soil series and land types commonly associated with wetlands, as described by the Soil Survey of Merrimack County, New Hampshire, include the following “poorly drained” soils:

Au Gres (AgA, AgB, AuB)	
Limerick variant (Lm)	
Ridgebury (RdA, RdB, RbA, RdB)	
Rumney (Ru)	

**12.7 PERMITTED USES**

**12.7.1 General:** Permitted uses are those uses which will not require the erection or construction of any structures or buildings, will not alter the natural surface configuration by the addition of fill or by dredging, and uses that otherwise are permitted by the Zoning Ordinance. Such uses may include the following:

- (a) Forestry and tree farming, using best management practices in order to protect streams from damage and to prevent sedimentation.
- (b) Cultivation and harvesting of crops according to recognized soil conservation practices, including the protection of wetlands from pollution caused by fertilizers, pesticides, and herbicides used in such cultivation.
- (c) Wildlife refuges.
- (d) Parks and recreation uses consistent with the purpose and intent of this Ordinance.
- (e) Conservation areas and nature trails.
- (f) Open spaces as permitted or required by the Subdivision Regulations or the Zoning Ordinance.
- (g) Minimum impact projects that meet project-specific criteria for NH Department of Environmental Services Wetlands Permits-by-Notification (PBNs) listed in the NH Code of Administrative Rules Env-Wt 309.05.

**12.7.2 Special Exceptions:** Special exceptions may be granted by the Board of Adjustment, after proper public notice and public hearing, for undertaking the following uses in the Wetlands Conservation Overlay District when the application has been referred to the Planning Board and the Conservation Commission for review and comment ~~at least thirty (30) days~~ prior to the hearing:

- (a) The construction of ~~S~~streets, roads, and other access ways and utility right-of-way easements, including power lines and pipelines, if essential to the productive use of land not so zoned and, if so located and constructed as to minimize any detrimental impact of such uses upon the wetlands.

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- (b) Water impoundments.
- (c) The undertaking of a use not otherwise permitted in the Wetlands Conservation **Overlay** District, if it can be shown that such proposed use is not in conflict with the purposes and intentions ~~listed in paragraph 12.1~~ of this section.

**12.7.38 SPECIAL PROVISIONS**

- (a) No septic tank or leach field may be constructed or enlarged closer than seventy-five (75) feet to any wetland **or as otherwise indicated by the NH Department of Environmental Services.**
- (b) No part of a wetland may be considered as part of the minimum size requirement of any lot. No wetland or part of a wetland may divide a lot in such a manner that its minimum lot size is not contiguous, unless:
  - (1) The lot contains at least one (1) acre of contiguous upland (the "buildable area"), and
  - (2) Such buildable area is served by municipal water or is ~~proved~~ **proven** to support on-site water without a variance or waiver from Town or State regulations, and
  - (3) Such buildable area is served by municipal sewer or is ~~proved~~ **proven** to support on-site sewage disposal without a variance or waiver from Town or State regulations.
- (c) The provisions of Section XII of this Ordinance shall not apply to the Federal, State, or Town governments who are building, altering, or reconstructing public streets, roads, highways, or other projects needed to serve the general public.

**12.9 IDENTIFICATION OF WETLAND** The entire length of the upland limit of the wetland buffer shall be marked with highly visible construction tape prior to any construction-related activities and maintained for the full duration. The applicant must also affix tags, as shown below, to trees or other durable objects (e.g. 4" x 4" wood posts). Tags must be placed at 50-foot intervals along the upland boundary side of the wetlands and maintained as needed to provide evidence of the upland side buffer boundary. Tags can be obtained from the Town of Hopkinton at the applicant's expense.



*Figure 1 Example Buffer Identification Tag*