

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

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For the purpose of this document, items that are proposed to be deleted are depicted in ~~BLACK strikethrough~~. Items that are proposed (for discussion) to be added are depicted in **BLUE**. Items that are proposed to be as a result of discussions (Work Group) on 5/5/2022 are depicted in **RED**.

**XX AUTHORITY**

The Wetlands Conservation District (Overlay) is adopted pursuant to Section 1.1, Authority, of this Ordinance and under the authority granted pursuant to RSA 674:21, Innovative Land Use Controls. Within the Wetlands Conservation District, the Planning Board is authorized to administer and grant conditional use permits in accordance with Section 2.1, Definitions, of this Ordinance.

~~12.1XX~~ **PURPOSES AND INTENT** The purpose of ~~this section~~ **the Wetland Conservation District** is to protect the public health, safety, and general welfare by controlling and guiding the **most appropriate** use of land areas which **that** have been found to be subjected of **to** 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;~~

**The wetlands and buffers in the Town of Hopkinton are a valuable natural resource requiring careful management to maintain their usefulness to public health, safety, and welfare. The Town of Hopkinton finds that wetlands and buffers:**

- (a) Prevent the destruction of, or significant changes to, natural wetlands which provide flood protection;
- (b) Protect unique and unusual natural areas;
- (c) Protect wildlife habitats and maintain ecological balances;
- (d) Protect potential water supplies, and existing aquifers (~~water-bearing stratum~~) and aquifer recharge areas;
- (e) **Protect persons and property against the hazards of flood inundation by ensuring the continuation of the natural flow patterns of streams and other water courses;**
- (f) **Provide for nutrient attenuation and augmentation of stream flow during dry periods;**
- (g) 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~~ **or inharmonious use** of wetlands; and
- (h) **Preserve and enhance those aesthetic values associated with the Wetlands Conservation District.**

**XX DEFINITIONS** The definition of words and terms used throughout this Wetlands Conservation District (Overlay) Ordinance can be found in Section II, Definitions.

[The terms below would be added/amended in Section II, Definition]

- **Best Management Practices:** The standard
- **Bog:** A wetland distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soil or water conditions.

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

---

- **Buffer, Wetland:** The undisturbed protected upland areas adjacent to wetlands and surface waters in the Wetlands Conservation District.
- **Development:** Any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, excavation, or drilling activities.
- **Marsh:** A wetland where the vegetation is distinguished by the absence of trees and shrubs and dominated by soft-stemmed herbaceous plants and other emergent vegetation, such as grasses, reeds, and sedges. The water table is at or above the surface throughout the year but can fluctuate seasonally.
- **Poorly Drained Soils:** Soils where the water is removed so slowly that the soil is saturated periodically during the growing season or remains wet for long periods as defined in the United States Soil Conservation Service Soils Survey of Merrimack County (latest edition).
- **Surface Water:** Pursuant to RSA 485-A:XIV, perennial and seasonal streams, lakes, ponds, and tidal waters, including all streams, lakes, ponds, marshes, water courses, and other bodies of water, natural or artificial.
- **Swamp:** A wetland that is dominated by trees and/or shrubs.
- **Very Poorly Drained Soils:** Soils where the water is removed so slowly that free water remains at or on the surface during most of the growing season as defined in the United States Soil Conservation Service Soils Survey of Merrimack County (latest edition).
- **Wetland:** Pursuant to RSA 482-A:2.X, an area inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

**12.2XX AREA DISTRICT BOUNDARY** The Wetlands Conservation District is defined as these areas **that are** delineated as very poorly and poorly drained soils by the U.S. Department of Agriculture (**USDA**) **Natural Resources Conservation Service (NRCS)**, ~~Soil Conservation Service~~ in the Soil Survey of **for** Merrimack County, New Hampshire. The Wetlands Conservation 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 U.S. 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.~~

**12.4XX 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 wetlands shall be delineated on ~~the a~~ plan, and the plan shall be signed and stamped by a certified soil scientist ~~and~~ **or** certified wetland scientist.

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

---

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 ~~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.~~

**XX WETLANDS BUFFER** Structures shall not be placed within 25 feet of the edge of a wetland unless they are deemed necessary as described in Sectionxx, Permitted Uses, or unless a Conditional Use Permit has been obtained in accordance with Sectionxx.

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

**12.6XX 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:

**12.6.1xx 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		

**12.6.2xx 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	Pickereel 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	

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

Hydrophyllus Grasses	Water Milfoil	
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**12.6.3xx 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		

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

Marsh (Mh)	Saco (Sa)	
Mixed Alluvial (Mn)	Scarboro (Sc)	
Muck and Peak (M.U.)		

**12.6.5xx Poorly Drained Soils:** Soil series and land types commonly **Poorly drained soils** associated with wetlands, as described by the **NRCS** Soil Survey of **for** 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)	

**12.7XX PERMITTED USES 12.7.1 General:** Permitted uses are those uses which **that** will not require the erection or construction of any structures or buildings; will not alter the natural surface configuration by the addition of fill **filling** or by dredging, and uses that otherwise are permitted by the Zoning Ordinance. Such uses may include the following: **The following uses listed are presumed to be consistent with the protection of wetland functions and values.**

- (a) **Forestry activities.** Forestry and tree farming, **These activities shall be conducted** using **Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, published by the N.H. Division of Natural and Cultural Resources, and with proper notification to the N.H. Wetlands Bureau, when required, in order to** protect streams from damage and to prevent sedimentation.
- (b) **Agriculture activities.** **These activities shall be conducted in accordance with the manual of Best Management Practices for Agriculture in New Hampshire, published**

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

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~~by the N.H. Department of Agriculture that includes~~ 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.~~ **protecting**

- (c) ~~Wildlife refuges.~~
- (d) Parks and recreational uses **that are** consistent with the purpose and intent of this Ordinance.
- (e) Conservation areas, ~~and~~ **wildlife refuges, and** nature trails.
- (f) Open spaces as permitted or required by the Subdivision Regulations or the Zoning Ordinance; and
- (g) **Driveway crossings and culverts for a single-family or two-family residential structure and their accessory uses, provided all state permits are obtained. Such crossings must impact a combined area of less than \_\_\_\_\_ square feet of wetland; otherwise, a Conditional Use Permit is required.**
- (h) **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**

~~12.7.2XX Special Exceptions~~ **CONDITIONAL USES:** ~~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 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:~~ **All activities in the Wetland Conservation Overlay District not listed in section xxx, Permitted Uses, are presumed to impair the function and value of the Wetlands Conservation District unless proven otherwise by the applicant. The Planning Board, after review and comment by the Conservation Commission, may grant the following uses a Conditional Use Permit:**

- (a) **The construction of** streets, roads, and other access ways and utility rights-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 wetland.
- (b) Water impoundments **for the purpose of creating a waterbody for wildlife and fire safety.**
- (c) **Structures within the wetland setback if it is demonstrated that no practicable alternative exists elsewhere on the lot; and**
- (d) ~~The undertaking of a use~~ **Other uses** not otherwise permitted in the Wetlands Conservation District if it can be shown that such proposed use ~~is not in~~ **does not** conflict with the purposes and intentions listed in ~~Paragraph 12.4 xx~~ of this Section.

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

---

**XX CONDITIONAL USE PERMIT** Application for a Conditional Use Permit shall be made on forms supplied by the Planning Board and shall include a site plan of one or more sheets at a scale of 1 inch = 100 feet or larger that demonstrates compliance with the requirements listed below.

- (a) North arrow and date.
- (b) Property lines.
- (c) Locus map showing adjacent wetlands and other significant hydrological features.
- (d) Names and addresses of abutting property owners and holders of conservation restrictions and easements.
- (e) Wetland limit and wetland buffers.
- (f) Soil types.
- (g) Vegetation types
- (h) Topographic contours at no greater than 5-foot intervals.
- (i) Surface drainage patterns, intermittent and year-round.
- (j) Existing and proposed development, vegetation removal, and land surface alteration.
- (k) Computation of the area to be impacted, in square feet of surface area and cubic yards of cut and fill; and
- (l) Stormwater management proposed during and after construction.

When deciding on any application, the Planning Board shall consider all relevant facts and circumstances. It shall make findings that the project is both consistent with the purposes of this Ordinance and minimizes impacts to the wetland and buffer, including but not limited to the following:

- (a) The proposed activity minimizes the degradation to, or loss of, wetlands and wetland buffers, and compensates for any adverse impact on the functions and values of wetlands, including but not limited to the capacity of the wetland to:
  - (1) Support fish and wildlife.
  - (2) Prevent flooding.
  - (3) Supply and protect surface and ground waters.
  - (4) Control sediment and pollutants.
  - (5) Support wetland vegetation; and
  - (6) Promote public health and safety.
- (b) The proposed activity will have no negative environmental impact on abutting or downstream property, connected water and/or wetland resources, including:



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

---

- (1) **Erosion.**
- (2) **Siltation.**
- (3) **Loss of fish and wildlife.**
- (4) **Loss of unique habitat having demonstrable, natural, scientific, or educational value.**
- (5) **Loss or decrease of beneficial aquatic organisms and wetland plants.**
- (6) **Dangers of flooding and pollution; and**
- (7) **Destruction of economic, aesthetic, recreational, and other public or private uses and values of the wetlands to the community.**

- (c) **The proposed activity or use cannot practicably be located otherwise on the site to eliminate or reduce the impact on the wetland or its buffer.**
- (d) **The proposed activity utilizes applicable best management practices.**
- (e) **Federal and/or state permit(s) have been received for the proposed activity.**
- (f) **The Planning Board may attach conditions to its approval, including but not limited to requirements for buffers, plantings, performance guarantees, and a reduction in proposed impervious surfaces.**

**12.7.3XX SPECIAL PROVISIONS:**

- (a) No septic tank or leach field **systems** may be constructed or enlarged closer than ~~seventy-five (75)~~ 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.
- (d) **Expansion of a nonconforming use or structure may be allowed by the Zoning Board of Adjustment in the wetland buffer provided that the encroachment upon the wetland is not increased and review by the Conservation Commission finds that any potential impact upon the wetland functions will be mitigated.**

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

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**XX 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 Wetland Conservation District and maintained as needed to provide evidence of the upland side buffer boundary. Tags shall be obtained from the Town of Hopkinton at the applicant's expense.



**COMMENTS FOR DISCUSSION:**

Buffer or Setback, which is appropriate. If setback, assume that we want the area undisturbed.

Special Exception or Conditional Use Permit: Zoning Board of Adjustment approves Special Exceptions and the Planning Board or Conservation Commission can grant Conditional Use Permits.

Wetland Delineation: Further discuss when required.

Accessory Structures (conditional uses) associated with existing primary structures, provided the applicant demonstrates that no practicable alternative exists elsewhere on the lot and outside of the Wetland Conservation District.

Army Corps delineation method, the Site Specific Soil Mapping Standards for New Hampshire Wetland Rules Env-Wt 100 through 800