

## Article 16 WETLAND CONSERVATION DISTRICT 10-9-04draft

### 16.1 GENERAL

- A. The Wetland Conservation District shall be considered as overlaying any other district established by this ordinance. Any use permitted in the portions of the district so overlaid shall only be permitted subject to all provisions of this section.
- B. Except for the permitted uses as listed in 16.5 of this section, there shall be no impact of wetlands or surface waters, unless all federal, state and local permits are in place.
- C. All impacts to wetlands shall be regulated in accordance with NH Code of Administrative Rules, Wt. 100-800 and require the receipt of the appropriate permit from the State of New Hampshire Department of Environmental Services Wetlands Bureau. The state process requires a review by the Canterbury Conservation Commission.
- D. The Canterbury Conservation Commission, established under RSA 36-A, has statutory standing before the Department of Environmental Services under RSA 482-A:11, III and provides a local source of assistance to both the department and the applicants for Dredge & Fill Permits.
- E. A special exception approved by the Canterbury Zoning Board of Adjustment shall be required for any use within the wetland except for those listed in 16.5. Note that state and/or federal permits may be required for uses not requiring a special exception under this ordinance.

### 16.2 PURPOSE

By the authority granted in New Hampshire RSA 674:16-17 and 674:20-21, the purpose of the Wetlands Conservation District is to protect the values and functions of wetlands, surface waters and their associated buffer zones. It is further intended, but shall not be limited to:

- A. Protect the public health, safety, general welfare and property;
- B. Reduce sedimentation of wetlands and surface waters;
- C. Aid in the control of non-point pollution;
- D. Provide a vegetative cover in the case of the buffer zones for filtration of runoff and the prevention of erosion;
- E. Protect fish spawning grounds, aquatic life, and bird and other wildlife habitats;
- F. Conserve natural beauty and open spaces; *Discuss merits of including this*
- G. Preserve ponds, rivers and streams in their natural state, *Discuss merits of including this*
- H. Protect persons and property from flood damage by preserving the natural flood storage areas,
- I. Control the development of structures and land uses which contribute to the pollution of surface and groundwater by sewerage, hazardous substances or siltation;
- J. Protect aquifers, which serve as existing or potential water supplies as well as the aquifer recharge system;

### 16.3 LOCATION OF THE WETLAND CONSERVATION DISTRICT

The areas within the town of Canterbury to which this section applies are as follows:

- A. Streams. This includes both perennial and intermittent streams wherever fresh water flows for sufficient time to develop and maintain a defined channel. The area of the stream shall lie within the banks as defined by the ordinary high water mark established by the fluctuations of water and indicated by physical characteristics such as a clear natural line impressed on the immediate bank, or shelving, or changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
- B. Ponds. The pond area shall be the extent of water at the full pond as determined by the top of the impoundment structure in artificial ponds or by the natural high water mark in natural ponds.
- C. Wetlands. A wetland area shall be delineated based on hydrophytic vegetation, hydric soils and wetland hydrology in accordance with techniques outlined in the Corps of Engineers wetlands Delineation Manual, Technical Report Y-87-1 (January 1987).
- D. Buffers. The buffer area shall be measured from the edge of any stream, pond, or wetland in a horizontal plane. The buffer is the area adjacent to a wetland and/or open water which should be kept free of uses that may introduce or facilitate pollution, sedimentation or other harmful effects to the wetland. The buffer shall include the area within twenty-five (25) feet from any wetland less than 1 acre, or intermittent stream, . For any wetland greater than 1 acre, perennial stream or pond the buffer shall be fifty (50) feet in a horizontal plane.
- E. Comprehensive Shoreline Protection Act. All public waters shall also be subject to the Comprehensive Shoreland Protection Act, New Hampshire RSA 483b as may be amended from time to time.
- F. Merrimack River. Article 5.2. B 4 herein, Merrimack River Setback, also applies.

### 16.4 DEFINITIONS

- **Bank/Edge of Wet:** the transitional slope immediately adjacent to the edge of a surface water body, the upper limit of which is usually defined by a break in slope, or, for a wetland, where a line delineated in accordance with Wetland Bureau Code of Administrative Rules Chapter Wt 301.01 indicates a change from wetland to upland.
- **Buffer:** an upland area adjacent to a wetland and/or surface water .
- **Great Pond:** Any natural water body having an area of ten (10) acres or more.
- **Stream, Intermittent:** a place where water flows for sufficient duration and/or in sufficient quantity to maintain a channel.
- **Stream, Perennial:** any channel, natural or man made, which has water present for twelve (12) months of a normal year but which may dry up during a period in which the rainfall is less than sixty (60) per cent of average for more than three consecutive months.
- **Surface water:** perennial and intermittent streams, lakes, ponds, marshes, watercourses, and other bodies of water, natural or artificial.

- **Wetland:** An area delineated based on hydrophytic vegetation, hydric soils and wetland hydrology in accordance with techniques outlined in the Corps of Engineers wetlands Delineation Manual, Technical Report Y-87-1 (January 1987).

#### 16.5 A SPECIAL EXCEPTION IS NOT REQUIRED FOR:

- A. Wetlands: Any of the following uses that do not alter the surface configuration by the addition of fill, removal of soil, or obstruct in any manner the natural flow of ground or surface water, or disturb in any manner the ground itself to any depth and that are otherwise permitted by the Zoning Ordinance.
1. Projects that fall under the Wetland Bureau's Minimum Impact Expedited Permit Application. These projects, however, must be reviewed by the Conservation Commission prior to approval by the Wetlands Bureau. *Refer to fact sheet or other reference*
  2. Repair or reconstruction of an existing legal structure that meets the following conditions:
    - a. Where the size, location and configuration remain the same
    - b. There shall be no work on any portion of the structure located in wetlands and/or surface waters.
    - c. The work shall not require the utilization of tracked or wheeled equipment in the water or wetland;
    - d. The structure has not been abandoned. Failure to maintain an existing structure in a state so that it is functional, and intact, for a period of five (5) years shall be prima facie evidence of abandonment or non-use.
  3. Mowing or cutting of vegetation in a wet meadow, red maple swamp, hemlock swamp, spruce/fir swamp, or white pine swamp, provided that the roots of the vegetation are not disturbed, and that the ground is frozen or sufficiently dry to avoid making ruts and that the area is stabilized once thawed and that the project is not located in prime wetlands.
  4. Hand raking of leaves or other organic debris from the shoreline or lake bed provided that:
    - a. At the time raking is done, the area is exposed by draw down, or
    - b. Raking does not disturb vegetative roots and is limited to less than nine-hundred (900) square feet of area.
  5. Removal of a beaver dam by hand or machine provided:
    - a. Machinery does not enter the water or create any impact by filling or dredging to adjacent surface waters, wetlands, or their banks;
    - b. All dredged materials are placed out of wetlands and out of the defined buffer area, and
    - c. Removal of the dam is done in a gradual manner that does not allow a sudden release of impounded water to cause erosion or siltation.
  6. Addition of native vegetation to enhance wetlands, but not the removal of wetlands vegetation except as provided in 16.5 A. 3.

7. Drilling of test wells by a public agency for purposes of exploring for public water supplies or hazardous materials.
8. Other activities as noted in NH Wetlands Bureau Code of Administrative Rules Wt. 303.05.

B. Buffer Zones: Any of the following uses that do not alter the surface configuration by the addition of fill, removal of soil, or obstruct in any manner the natural flow of ground or surface water, or disturb in any manner the ground itself to any depth and that are otherwise permitted by the Zoning Ordinance.

1. All projects as described in the Wetland Bureau's Minimum Impact Expedited Permit Application
2. Buildings and structures not to exceed one hundred twenty (120) square feet and without sanitary plumbing and raised above-ground on concrete or similar blocks placed on the ground surface in such a manner as to permit the natural flow of any surface water,
3. Decks raised above the ground so as to permit the natural flow of any surface waters,
4. Potable water supply wells and their associated water lines and associated power lines, provided there are adequate erosion control measures in place during work and repair of any disturbance,
5. Monitoring wells for observation purposes, provided there are adequate erosion control measures in place during work and there is repair of any disturbance,
6. Forestry and tree farming in accordance with good silvicultural practices,
7. Agriculture, including growing and harvesting of crops.

#### **16.6 A SPECIAL EXCEPTION IS REQUIRED FOR:**

A. Wetland: Any project that requires a NH Wetlands Bureau Standard Dredge & Fill Permit and is not in the right-of-way of a public road, shall require a Special Exception from the Canterbury Zoning Board of Adjustment.

A Standard Dredge & Fill Permit is required if the proposed work includes any one or more of the following:

1. Temporary or permanent construction in a bog, marsh, or Atlantic white cedar swamp.
2. Dredge or fill for the purpose of creating a buildable lot. This does not include driveway crossings.
3. Fill to obtain adequate setback under NH DES subsurface systems bureau rules.
4. Impact of fifty (50) or more linear feet, measured along the shoreline, of a lake or pond or its bank.
5. Alteration of the course of or disturbance of fifty (50) or more linear feet, measured along the thread of the channel, of an intermittent stream channel or its banks or construction during periods when the stream is flowing.
6. Combined temporary and permanent impacts of more than three thousand (3,000) square feet in a swamp or wet meadow.
7. Relates to other work done on the property within the last twelve (12) months which, when taken in aggregate, would exceed minimum impact criteria.

8. Any work within a wetland on the property that has already begun or was previously completed without a permit.
  9. Dredge or fill in a great pond.
  10. Work in a perennial stream.
- B. Buffer: a Special Exception is required for:  
Any project not listed in 16.5 that involves the impact of more than three thousand (3000) square feet of buffer, and is not in the right-of-way of a public road, shall require a Special Exception from the Canterbury Zoning Board of Adjustment.
- C. The Board of Adjustment, in acting on an application for a special exception in the Wetlands Conservation District, shall take into consideration the conditions as noted in 10.021.
- D. The Board of Adjustment may grant a Special Exception for such projects after the application for the Special Exception has been reviewed and reported upon by the Canterbury Conservation Commission and forwarded to the Board of Adjustment within forty (40) days of a public meeting at which the Conservation Commission first received detailed plans on the project.
- D. The Planning Board may also be required to submit a report to the Board of Adjustment, if requested by the Board of Adjustment. The Planning Board shall submit its report within the above specified forty (40) day period.

#### **16.7 CRITERIA FOR EVALUATION**

- A. For all projects requiring a Special Exception the applicant shall demonstrate by plan or example that the following factors have been considered in their design:
1. The need for the proposed project;
  2. The plan proposed is the alternative with the least impact to the wetlands, surface waters and/or their associated buffers;
  3. The impact on plants, fish and wildlife;
  4. The impact on the quantity and/or quality of surface and ground water;
  5. The potential to cause or increase flooding, erosion, or sedimentation;
  6. The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex and/or buffer area were also permitted alterations to the wetland and buffer proportional to the extent of their property rights;
  7. The impact of the proposed project on the values and functions of the total wetland or wetland complex.
- B. The Town of Canterbury shall place emphasis in preserving peatlands and marshes. This priority shall be based upon the rarity of those environments and the difficulty in restoration of the value and function of those environments.

## Local Buffer requirements

Town	Conservation Contact	Buffer Information
Amherst	John Harvey	No structure shall be erected within fifty (50) feet of any wetland. A naturally vegetated buffer of twenty-five (25) feet shall be maintained from the edge of any wetland. A naturally vegetated buffer of one hundred (100) feet shall be maintained from the edge of any Public Water. Use State Definition.
Barrington	John Wallace 664-5974	50' buffer required for any wetland with <u>exceptions</u> listed. 100' buffer recommended in a Shoreland Overlay Zone and for Isinglass River Zone.
Bedford	Nancy Larson 472-8104	50' from all wetlands for all structures; 75' septic.
Boscawen	Michele Tremblay 796-2615	On steep grades, up to 200' buffer. Town is revising its master plan and hopes to improve the buffers for wetlands and surface waters, which are now same as State.
Bow	Phil Wolfe 228-3647	30-150' buffers all wetlands; 8 prime wetlands (no logging) Use State definition.
Bradford	Ann Eldridge; John Robie 938-5266	Wetland buffers: no buildings 100' from very poorly drained soil and 50' from poorly drained soil; 75' septic setback.
Brookline	Betty Hall 673-4841	50 foot buffer from all wetlands. There are two setbacks for septic systems that follow state regulations: 75' from wetlands except those where soil type is coarse-textured with rapid to very rapid permeability, where a 125-foot setback is required.
Claremont	Norman Wakeman 542-5267	500' setback from CT River; otherwise follow State regulations.
Dover	Tom Fargo	50' setback from State defined wetlands. 75' septic setback from Very Poorly Drained.
Dunbarton	Margaret Watkins 774-7120	125' buffer from Great Ponds and adjacent wetlands.
Durham	Jim Campbell	50' setback from poorly drained soils and a 75' setback from very poorly drained. Currently rewriting ordinance likely to move to a 100' setback
Exeter	Don Clement 728-0238	25' no cut, no disturbance; 75' no construction; and 100' from prime wetlands
Fitzwilliam	Jody Hartwell, Town Office 585-7791	75' in wetlands overlay district
Gilmanton	Nancy Stearns 267-7293	75' on lakes, water bodies. 50' from wetlands, streams.
Goffstown	Collis Adams	50 foot setback on all wetlands (as defined by the state) greater than 2,000 SF. Proposal to change setback to 100 feet for wetlands greater than 20,000 SF.
Hampton Falls	Dan Dewitt 926-2664	100' buffer on surface waters and wetlands
Hanover	Yicki Smith 643-0708	75' from wetlands no structures, no parking; 125' leach field setback from any wetland (use Army Corps methodology). River: same provisions as for wetlands. ZBA may approve buffer intrusions. They monitor cutting of trees; no fertilizers allowed. lawn maintenance does great harm to water. Enforcement is a problem: need to make everyone aware of the rules. Use State Definition.
Hollis	Peter Baker 465-7981	100' buffer regulations around all wetlands and surface waters.
Hopkinton	Ron Klemarczyk	rivers: 75'; wetlands: case-by-case
Jaffrey	Bill Elliott 532-6141	75', and they are "going for 100' "
Laconia	Dawn Emerson and Stephanie Verdile	75' from a prime wetland, 50' from a non-prime wetland, and 30' outside the boundary of any other

Town	Conservation Contact	Buffer Information
	(source)	wetland. Have a wetland buffer maintenance provision. We also have water body buffers that are 30' from public waters, rivers, etc.
Lyme	Vicky Davis 795-4639	Buffers: 100' wetlands, small surface waters; 200' great ponds & the River. This town has the strongest buffer regulations in NH! A very progressive ordinance that works well, developed in eighties, well-supported by people. Planning Board is very responsive to unintended consequences of the ordinance, pays close attention to agricultural soils.
Londonderry	Timothy J. Thompson, AICP (source)	50' around unnamed wetlands greater than 1/2 acre, 100' around named wetlands. Use State definition.
Merrimack	Gary Gagne 424-1412	25' wetlands; 40' building setback
Milford	Hub Seward 673-1463	25' buffer from any wetland; 50' from designated streams and adjacent wetlands: no structures, preserve natural vegetation.
Mont Vernon	Tavis Baier 654-9738	Has no big lakes or rivers. 25' buffer from all wetlands except vernal pools. 16-yr. old master plan is being rewritten asking for 125' setbacks from wetlands.
New Boston	Cyndie Wilson 487-5036	Town requires two contiguous acres of dry land for a building lot. Their wetland/surface water regulations are up for revision.
Peterborough	Francie von Mertens 924-6550	50' from wetlands and surface waters. Conservation Zone 100' surface waters.
Portsmouth	Donald Coker (source)	100 foot wetlands buffer zone setback from wetlands over 20,000 sf
Rindge		50' from wetlands and surface waters. Army Corps definition.
Rochester		Recognize Very Poorly and Poorly Drained soils, with limits on uses, but no setbacks. Considering 50' from State defined wetlands.
Salem		40' for regular wetlands and 100' (undisturbed buffer) for Prime Wetlands in Salem and these have never been challenged.
Sandwich	Chip Kimball 284-6506	100' and 125' from high watermark
Somersworth		All development within one hundred (100) feet of wetlands, other than uses specified in ordinance shall be subject to review as a conditional use to insure adequate protection of the values and functions of the wetlands.
Tamworth	John Mersfelder 323-7793	125' septic from surface waters (hydric A soils); 75' from wetlands (hydric B soils). No construction within 25' of limits of a wetland. If rare, threatened or endangered species, or a bog: 300', unless developer can prove no adverse impact.
Webster	Betsy Janeway 746-3818	Town reversed its 9-yr. old 125' buffer on surface waters in 1999, downgrading to 50' but CC is trying to implement better, clearer, more workable buffers for both surface waters and wetlands, incl. 3 bogs, in time for March 2002 vote.
Windham	Cherie Howell 432-1537	100' from wetlands 1 acre or bigger