

6.10.14 New Draft Changes in Blue. Changed the table in 8.5 to combine with 8.6. Numbering changes after that with some minor word changes. **Previous changes in Red by Dylan after Sept 24 Pl. Bd. Mtg.**

Section 8 – Wetlands Conservation District

8.1 Purpose and Intent

[Though the same in purpose, 8.1 replaces current 8.1. Wording is changed to provide greater clarity, a more thorough purpose, and is ordered in terms of priority.]

The purpose of the Wetlands Conservation District is to protect the public health, safety and general welfare. **The Wetlands Conservation District also strives to protect** wetland ecological integrity and function by controlling and guiding **land use** in areas **adjacent to and within** wetlands. It is intended that this section shall:

- 8.1.1 Prevent development of structures and land uses on wetlands which will contribute to pollution of surface and groundwater by sewage or toxic substances or sedimentation;
- 8.1.2 Prevent destruction of, or contribute to pollution of natural wetlands which provide flood protection, provide filtration of water flowing into ponds and streams, augment stream flow during dry periods, or are connected to the ground or surface water supply;
- 8.1.3 Protect potential water supplies and existing aquifers (water bearing stratum) and aquifer recharge areas;
- 8.1.3 Prevent unnecessary or excessive expense to the Town in providing or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands;
- 8.1.5 Prevent damage to structures and properties caused by inappropriate development of wetlands.
- 8.1.6 Preserve the rural quality and scenic beauty of the town.
- 8.1.7 Protect wildlife habitats, maintain ecological balances and enhance ecological values such as those cited in NH RSA 483-A:1-b.
- 8.1.8 Encourage uses that can be appropriately and safely located in and around wetlands.

8.2 Definitions

[8.2 replaces current 8.2 and limits the section to definitions. More terms are defined, wording is intended to be easier to understand.]

Wetlands: An area that is 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. Wetlands include, but are not

limited to swamps, streams, ponds, vernal pools, marshes, bogs, tidal wetlands and similar areas.

Prime Wetlands: are defined as any wetlands within the jurisdictional definitions of RSA 482-A:3 and RSA 482-A:4 that possess one or more of the values set forth in FSA RSA 482-A:1 and that, because of their size, unspoiled character, fragile condition or other relevant factors, make them of substantial significance.

The boundaries of Prime Wetlands located in Hampton Falls are illustrated on tax map dated October 2007, along with an accompanying report entitled *Prime Wetland Inventory Report, Hampton and Hampton Falls, New Hampshire, February 2006*, which identifies the important values and critical functions that are provided by these wetlands. The Prime wetland map and report are on file at the Hampton Falls Town Offices.

Ten Prime Wetlands Complexes

1	Dodge Ponds Complexes	73.5 acres
2	Grapevine Run Complex	40.7 acres
3	Grapevine Run Headwaters	113 acres
4	Hampton Falls River Complex	40.5 acres
5	Hampton Falls Salt Marsh	
6	Taylor River Complex (Central)	224.9 acres
7	Taylor River Complex (West)	221.4 acres
8	Taylor River Headwaters Complex	141.5 acres
9	The Cove Complex	186.9 acres
10	Winkley Brook Complex	208.4 acres

Tidal Wetlands: Are defined as wetlands whose vegetation, hydrology or soils are influenced by periodic inundation of tidal waters.

Vernal Pools: Are defined as temporary bodies of water providing essential breeding habitat for certain amphibians and invertebrates and that do not support fish. For references, see *Identification and Documentation of Vernal Pools in New Hampshire, 1997*.

Setback: Is the distance from the edge of the wetland boundary to a structure within which building and construction activity is prohibited.

Wetland Buffer: An upland area, adjacent to a wetland or surface water body, which is subject to special regulations and reviews in order to protect the adjacent wetland or surface water body's value and function. (See also: **Vegetated Buffer Strip**)

Vegetated Buffer Strip: An area retained in its natural state (undisturbed, no cut) or replanted native non-invasive vegetation along the banks of watercourses, surface water bodies or wetlands, for the purpose of preventing erosion, trapping the sediment in overland runoff, and allowing for periodic flooding without damage to structures.

Surface Waters: Perennial streams, lakes, ponds, and tidal waters within the jurisdiction of the town, including all streams, lakes, or ponds bordering on the town, marshes, and other natural bodies of water.

8.3 Wetland Conservation District Boundaries

[8.3 is a new section which was split from current 8.3 to provide better clarity. Wording has been changed.]

The requirements of this ordinance are applicable to the entire Town of Hampton Falls and include all surface water bodies, prime wetlands, wetlands and wetland setbacks and buffers.

Delineation Requirements: The precise location of a wetland boundary in any particular case must be determined by on-site inspection of soils, vegetation, and hydrology by a New Hampshire Certified wetland scientist using the *Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1* (January 1987) as amended and *Field Indicators for Identifying Hydric Soils in New England* (version 2, July 1998) published by the New England Interstate Water Pollution Control Commission as amended.

In cases where areas designated by this Section are regulated by other parts of the Zoning Ordinance, Subdivision Regulations, or Site Plan Review Regulations, the most restrictive regulations shall apply.

8.4 Permitted and Prohibited Land Uses within the **Wetland Conservation District**

[8.4 is a replacement for existing 8.3 & 8.4. The intent is to include what can and can not be done in the same section. Wording was done for clarity. For instance, who is going to build a wharf in Hampton Falls? But someone may want to build a dock.]

8.4.1 Prohibited uses include the erection of a structure or alteration in land surface configuration by the addition of fill or by dredging, except if expressly permitted in 8.4.2 below.

8.4.2 Permitted uses are as follows:

8.4.2.1 Agriculture, including grazing, crop production and construction of fences using *Best Management Wetlands Practices for Agriculture* (July 1993 – Amended September 1998) provided that such use does not cause significant increases in surface or groundwater contamination by pesticides or other toxic or hazardous substances and that such use will not cause or contribute to soil erosion. Manure storage is not included.

8.4.2.2 Forestry and tree farming using *Best Management Practices Erosion Control on Timber Harvesting Operations in New Hampshire* (April 1996 and as amended.) This permitted use includes the construction of an access road for said purpose.

8.4.2.3 Wildlife habitat enhancement and management.

8.4.2.4 Passive recreational uses consistent with the purpose and intent of the Section.

8.4.2.5 Conservation areas and nature trails using *Best management Practices for Erosion Control during Trail Maintenance and Construction (1994 and as updated.)*

8.4.2.6 Residential and **or Commercial** uses by Special Exception as provided for in 8.4.3 **8.8** below.

8.4.2.7 The construction of **fences**, footbridges, boardwalks and docks, provided that said structures are constructed on posts or pilings so as to permit unobstructed flow of water; the natural contour of the wetland is preserved; and the Planning Board has approved the proposed construction of the footbridges, boardwalks and docks.

8.5 Setbacks & Buffers

[This section is new because it replaces the blanket 100 foot setback of the current ordinance.]

In order to protect the integrity and functionality of wetlands, the following setbacks, wetland and vegetative buffers shall be observed from the edge or boundary of a wetland within the wetland setback. Stumping and application of fertilizers or herbicides may not occur within the entire wetland buffer.

Resource	Size of Resource	Relationship to Surface Waters	Minimum Setback	Size of Wetland Buffer	Size of Vegetative Buffer
Prime Wetlands and Perennial Streams	Any size	n/a	100 feet	100 feet	50 feet
Vernal Pools	Any size	n/a	100 feet	100 feet	50 feet
Wetlands and Intermittent Streams	Any size	Contiguous with Surface Waters	75 feet	75 feet	
Wetlands	Greater than 5,000 square feet	Not Contiguous with Surface Waters	50 feet	50 feet	25 feet
Wetlands	Less than 5,000 square feet	Not Contiguous with Surface Waters	25 feet	25 feet	25 feet
Man-Made Wetlands: Ponds, Detention Basins, Drainage Ways and Treatment Swales	Any size	Not Contiguous with Surface Waters	10 feet	0	0

Prohibited uses in the setback include, but are not limited to:

- 8.5.1 Any structure, impermeable surface or parking space.
- 8.5.2 Waste, septage, manure or sludge disposal.
- 8.5.3 Storage of gasoline, fuel oil, road salt, pesticides, herbicides, or other hazardous materials.
- 8.5.4 Excavation except in the case of maintenance of man-made detention basins, drainage ways and treatment swales.
- 8.5.5 Fill

8.6 Buffers

[This section is ~~new~~ combined with previous. There is no Buffer in the current ordinance.] This section to be deleted.

In order to protect the integrity and functionality of wetlands, the following wetland and vegetative buffers shall be observed from the edge or boundary of a wetland within a wetland setback. Stumping and application of fertilizers or herbicides may not occur within the entire wetland buffer.

Resource	Size of Resource	Relationship with Surface waters	Size of wetland buffer	Size of vegetative buffer
Prime Wetlands and Perennial Streams	Any size	-	100 feet	50 feet
Vernal Pools	Any size	-	100 feet	50 feet
Wetlands and Intermittent Streams	Any size	Contiguous with Surface Waters	75 feet	25 feet
Wetlands	Greater than 5,000 square feet	Not contiguous with Surface Waters	50 feet	25 feet
Wetlands	Less than 5,000 square feet	Not contiguous with Surface Waters	25 feet	0 feet

8.6 Special Use Permits

[8.6 is a replacement for current 8.5. Content is the same. Wording has been changed for clarity and reference to best practices and their updates.]

- 8.6.1 A special use permit may be granted by the Planning Board for the construction of roads and other access ways, pipelines, power lines and other transmission lines, provided that **ALL** of the following conditions are found to exist. Application must include the precise location of wetland boundaries and type determined by a New Hampshire Certified wetland scientist using the *Corps of Engineers Wetlands Delineation Manual*,

Technical Report Y-87-1 (January 1987) as amended and Field Indicators for Identifying Hydric Soils in New England (version 2, July 1998) published by the New England Interstate Water Pollution Control Commission as amended.

- 8.6.1.1 The proposed construction is essential to the productive use of land not within wetlands, setbacks, or buffers.
- 8.6.1.2 Design and construction methods will be such as to minimize detrimental impact upon the wetlands and will include restoration of the site as nearly as possible to its original grade and condition.
- 8.6.1.3 No alternative route which does not cross a wetland or has less detrimental impact on the wetland is feasible.
- 8.6.1.4 Economic advantage alone is not the reason for the proposed construction.
- 8.6.2 Prior to the granting of a Special Use Permit under this section, the applicant shall agree to submit a performance security to the Board of Selectmen. The security shall be submitted in a form and amount, with surety and conditions satisfactory to the Selectmen and approved by Town Counsel to ensure that the construction has been carried out in accordance with the approved design. The security shall be submitted and approved prior to issuance of any permit authorizing construction.
- 8.6.3 The Planning Board may require the applicant to submit a wetlands impact assessment to aid in evaluation of the application. The cost of the assessment shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the costs of other special instigative studies and for the review of documents required by particular applications.

8.7 Special Exceptions

[8.7 is the same as current 8.7 except that the date of the approval of the existing ordinance is specified rather than referenced as "date of approval". This was done to make it easier if anyone needs to look it up.]

Upon application to the Zoning Board of Adjustment, a special exception shall be granted to permit the erection of a structure within the Wetlands Conservation District on ~~vacant~~ approved building lots provided that all of the following conditions are found to exist.

- 8.7.1 The lot upon which an exception is sought was an official lot of record, as recorded in the Rockingham County Registry of Deeds as of March 8, 1988. ***Date needs to be verified.***
- 8.7.2 The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Wetland Conservation District.

- 8.7.3 Due to the provisions of the Wetlands Conservation District, no reasonable and economically viable use of the lot can be made without the exception.
- 8.7.4 The design and construction of the proposed use will, to the extent practical, be constructed with the purpose and intent of this Section.
- 8.7.5 The proposed use will not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of groundwater, or other reason.
- 8.7.6 The Zoning Board of Adjustment may themselves, or upon petition from the Building Inspector, Conservation Commission or abutters, hire a qualified consultant or consultants to prepare such studies as are necessary to determine whether the conditions set forth above have been met. The cost of such studies shall be borne by the applicant.

8.8 Permit Review Procedures

[8.8 replaces 8.8 and is the same except for minor wording changes for clarity and removal of existing 8.8.2.2 and 8.8.3.2 due to being repetitive of the subdivision and commercial application process.]

- 8.8.1 Building permits for individual lots:
 - 8.8.1.1 Lots of Record as of March 8, 1988 – the Building Inspector shall check the location of proposed construction relative to wetlands to ensure compliance with this Ordinance. Wetland locations and setbacks shall be submitted to and reviewed by the Building Inspector. The person applying for a building permit shall gather necessary information. Additional information may be requested at the discretion of the Building Inspector.
 - 8.8.1.2 New lots, multifamily and Non-residential Site Plans – The Building Inspector shall rely on the review of the Planning Board in connection with the Subdivision and Site Plan Review regulation process.
- 8.8.2 Subdivision applications:
 - 8.8.2.1 Upon receiving a subdivision application, the Planning Board shall review the location of all proposed new lots relative to wetlands to ensure compliance to this Ordinance.
- 8.8.3 **Multifamily** and Non-residential Site Plan Review applications:
 - 8.8.3.1 Upon receiving a **multifamily** or non-residential site plan review application the Planning Board shall review the location of all proposed construction relative to wetlands to ensure compliance with this Ordinance.

8.9 Violations

[New]

Any wetland (including prime wetlands and vernal pools) or wetland setback or buffer altered in violation of this ordinance shall be restored at the expense of the violator(s) as provided by RSA 483-A:5 and under the direction of a New Hampshire Certified Wetland Scientist. Said restoration shall be subject to review by the Hampton Falls Conservation Commission. When appropriate, injunctive relief shall be sought by the Town as per RSA 676:15, and civil fines imposed as per RSA 676:17.

8.10 Appeal of Wetland Classification or Boundaries

[8.10 replaces 8.9. Though intent is the same, new wording specifies the use of a NH Certified Wetland Scientist.]

~~In the event that an area is alleged to be incorrectly designated on the Wetland Conservation District map, the person aggrieved by such designation, or the Planning Board may call upon the services of an independent New Hampshire Certified Wetland Scientist to examine the area in question and report on the actual location of the wetlands. Such investigations shall be undertaken at the expense of the person or persons so aggrieved.~~

CONSIDER THIS: In the event that the wetlands conservation district and or associated boundary is in dispute between an applicant and a Hampton Falls Local Land Use Board as defined by NH RSA 672:7, the Local Land Use Board may call upon the services of an independent NH certified wetlands scientist to examine said area and report findings to the Local Land Use Board for their determination of the wetland conservation district and or boundary. The costs to the Town of such dispute shall be borne by the applicant.

Conservation Commission (CC) Open Concerns

- Subdivision regulation 6.2.20 lists a 100 ft setback for wellheads and references the existing wetlands ordinance. CC's recommendation is that this be changed to reference any new wetlands ordinance or if Planning Board wishes to maintain the 100 ft setback that it be specified within the wetlands ordinance.
- *Section 6.2.20 will be changed to the following (deleting 100 feet):* Well heads shall not be located within the **wetlands setback**. By definition, well heads are structures and shall not be located within the **wetland buffer** as stipulated in Article III, Section 8 of the Hampton Falls Zoning Ord.....
- Article IV, Section 10 of the Zoning Ordinance lists a 100 ft setback for animal buildings, keeping areas and waste material storage areas. CC believes this is inconsistent with these recommendation and/or should at the very least be incorporated into the wetland ordinance to ensure all wetland related setbacks can be found in 1 area.
- *Article IV, Section 10.1 will be changed to:*

Animal buildings, keeping areas and waste material storage areas shall be a minimum of 50' from all property lines, 75' from private water wells and [shall follow wetlands setback and buffer regulations as stated in Article3 Section 8.](#)

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