

**ARTICLE XVI
WETLANDS OVERLAY DISTRICT**

A. Purpose and Intent

The purpose of this article 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 saturated or subjected to high water table for extended periods of time; including established and seasonal wetlands. Wetlands are extremely important to the Town as they provide for flood storage, wildlife habitat, maintenance of water quality, and groundwater recharge.

It is intended that this Article shall:

1. Protect unique and unusual natural areas;
2. Protect wildlife habitats, maintain ecological balances and enhance ecological values such as those cited in RSA 483-A:1-b;
3. Protect potential water supplies and existing aquifers (water bearing stratum) and aquifer recharge areas;
4. Encourage those low-intensity uses that can be harmoniously, appropriately and safely located in wetlands;
5. Prevent the development of structures and land uses on naturally occurring wetlands which will contribute to pollution of surface and ground water by sewage or toxic substances or sedimentation;
6. Prevent the destruction of, or significant changes to, natural wetlands which provide flood protection, provide filtration of water flowing into ponds and streams, augment stream flow during dry periods, and are closely connected to the ground or surface water supply; and
7. Prevent unnecessary or excessive expense to the Town for the purpose of providing and or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands.

B. Overlay District Boundaries

The Wetland Overlay District is an overlay district which places additional land use controls to those existing underlying Zone Districts. The boundaries of the Wetlands Overlay District include all Wetlands and Wetland buffer areas described as follows:

- (1) Wetlands as defined herein, which include, but are not limited to, swamps, marshes and bogs.

- (2) Wetland buffers as specified in Section D and Table D.1.

The Wetland boundary shall be determined (delineated) by a NH Certified Wetlands Scientist. The Wetland delineation and any necessary soil testing procedures shall be conducted at the expense of the landowner or applicant. Any costs incurred through such appeals shall be borne by the landowner or applicant. The wetland shall be classified by the applicant in accordance with the US Fish and Wildlife Service Manual FWS/OBS-79/31, "Classification of Wetlands and Deep Water Habitat of the United States".

C. Definitions

1. **Wetlands:** Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support under normal conditions a prevalence of vegetation typically adapted for life in saturated soil conditions. They include, but are not limited to, swamps, bogs, and marshes. Wetlands shall be defined in accordance with the most current definition of U.S. Army Corps of Engineers, as jurisdictional wetlands.
2. **Wetland Buffer:** A naturally vegetated upland area adjacent to a wetland or surface water. If the area is disturbed, it must be stabilized with a minimum herbaceous layer.
3. **Wetland Buffer adjacent to Vernal Pools:** A naturally vegetated upland area adjacent to a vernal pool that shall not be disturbed.
4. **Stream:**
 - A. **perennial:** a water course which flows throughout the year in most years and is capable of supporting aquatic organisms (e.g fish).
 - B. **Intermittent drainage:** a water course which ceases to flow in most years.
5. **Wetland Scientist:** A person who is currently certified by the State of New Hampshire qualified to identify, delineate, classify and evaluate wetlands.
6. **Watershed:** The area lying within the drainage basins of public water bodies.

D. Establishment of Buffer Areas

A naturally vegetated buffer provides a protective barrier that helps maintain the beneficial functions of a wetland such as: sediment collection, erosion control, pollution filtration, flood control and wildlife habitat protection.

1. A naturally vegetated Buffer Area shall be retained within specified distances of any wetland in accordance with Table D.1:

TABLE D.1.

2. Existing buildings within the buffer area may be repaired or rebuilt, provided that the repaired or rebuilt structure conforms to the dimensions of the former structure and does not extend any further into the wetlands or buffer area than the original foundation, and furthermore, appropriate erosion and sediment control measures shall be used.
3. In cases of public water bodies, as defined by the Comprehensive Shoreland Protection Act, those buffers and setbacks required by RSA 483-B shall apply, except as stated in Table D.1. These currently include: Blaisdell Lake, Billings Pond, Kezar Lake, Gile Pond, Loch Lyndon (Newbury) Reservoir, and Russell Pond.
4. Buffers shall not be required if the wetland or surface water is one of the following types:
 - a. A man-made vegetated swale or roadside, or driveway ditch,
 - b. A sedimentation/detention basin,
 - c. A man-made agricultural, irrigation pond, recreational pond, or fire pond.
 - d. A septage lagoon.

E. Uses Permitted in Wetland and Buffer Areas

1. Any use otherwise permitted by ordinances of the Town of Sutton and State and Federal laws that does not involve the erection of a structure or that does not alter the surface configuration of the land by the addition of fill or by dredging.
2. Agriculture, including grazing, hay production, truck gardening and silage production provided that such shall not cause an increase in surface or ground water contamination by pesticides or other toxic or hazardous substances and that such use will not cause or contribute to soil erosion. Refer to Best Management Wetland Practices for Agriculture, NH Dept. of Agriculture.
3. Forestry and tree farming to include the construction of access roads for said purposes, provided that said roads do not obstruct the natural flow of water, and the necessary required permits are obtained. Refer to Best Management Practices for Erosion Control on Timber Harvest Operations in NH, NH Dept. of Resources and Economic Development, Division of Forests and Lands.
4. Wildlife habitat development and management.
5. Recreational uses consistent with the purpose and intent of this Ordinance.
6. Conservation areas and nature trails. Refer to Best Management Practices for Erosion Control During Trail Maintenance and Construction, NH Dept. of Resources and Economic Development, Trail Bureau.
7. Water impoundment and the construction of well water supplies.

8. Drainage-ways to include streams, creeks, or other paths of normal runoff water and common agricultural land drainage.

9. Septic systems, leach fields and other waste disposal facilities shall be permitted only in accordance with the State Department of Environmental Services (DES) requirements.

F. Filled Lands and Pre-existing Uses

Lands which may have been wetlands but were filled under properly issued state and town permits, or pre-existing conditions prior to 1976, granted prior to the adoption of this ordinance shall be judged according to the soils existing at the site at the time the application for building permit or subdivision is made.

G. Conditional Uses

A Conditional Use Permit may be granted by the Planning Board (RSA 674:21 II) for the construction of roads and other access ways, and for pipelines, power lines, and other transmissions lines, provided that all of the following conditions are met:

1. The proposed construction is essential to the productive use of land, and not part of the Wetlands Areas.
2. Design, construction and maintenance methods will be such as to minimize detrimental impact upon the wetland and will include restoration of the site as nearly as possible to its original grade and condition.
3. No alternative route which does not cross a wetland or which has less detrimental impact on the wetland is feasible.
4. Cost of the proposed construction compared to alternatives shall not be a consideration in granting or denying the permit.
5. The Conservation Commission has had the opportunity to review and comment.

H. Other Provisions

1. The Board of Selectmen shall not issue any permit for construction within the wetlands and wetland buffer (see Section E) unless such activity conforms to the provisions of this Ordinance. The Board of Selectmen shall have the power to enforce this Ordinance, and violations may be punishable by fines as provided by RSA 676:17.
2. Any wetlands altered in violation of this Ordinance shall be restored at the expense of the violator(s) as provided by State DES regulations.