

Appendix C

Model Wetlands Conservation District Overlay Ordinance - DRAFT

ARTICLE X-D
WETLANDS CONSERVATION OVERLAY DISTRICT

1.0 Title

This article shall be known as the “Wetlands Conservation District Ordinance of the Town of Grantham”

2.0 Authority

By the authority granted in NH RSA 674:16 and 674:21 and in the interest of public health, safety, and general welfare of the Town of Grantham, the Wetlands Conservation District is hereby established.

3.0 Purpose and Intent

The purpose of this Ordinance is to protect and regulate the use of wetlands and their buffer areas, as defined herein.

The intent of this ordinance is to:

- A. Insure the protection of wetland resources from activities that would adversely affect their functions and values, including but not limited to the following:
 - 1. Prevent damage of property and degradation of surface and groundwater by maintaining the capacity of wetlands to receive stormwater and minimize flooding events;
 - 2. Prevent or minimize soil erosion and the subsequent sedimentation of wetlands and surface waters ;
 - 3. Prevent the loss of unique and unusual natural areas associated with wetlands and surface waters;
 - 4. Prevent the degradation of surface and ground water quality within and adjacent to wetlands;
 - 5. Prevent the degradation of potential surface and ground drinking water supplies as well as existing aquifers and their recharge areas;
 - 6. Prevent the loss or degradation of wetland wildlife populations and protect their habitats both within wetlands and the immediate buffer zone of wetlands;

7. Prevent the loss or degradation of a diversity of recreational benefits in wetlands such as hunting, fishing, canoeing, bird watching, and hiking;
 8. Prevent the loss of the visual and aesthetic qualities of wetlands including their contribution to open space, character, and overall scenic beauty of the landscape.
- B. Insure the protection of wetland buffer areas from activities that would adversely affect them, including but not limited to the following :
1. Prevent erosion and sedimentation by stabilizing soil adjacent to wetlands and surface waters;
 2. Moderate the effects of stormwater runoff into wetlands and surface waters by filtering sediment, nutrients and harmful or toxic substances, and moderating thermal discharges;
 3. Protect and maintain wetland wildlife habitat in the buffer zone of wetlands and surface waters;
 4. Support and protect native vegetation in the buffer zone of wetlands and surface waters;
 5. Reduce the disturbances to wetland resources caused by intrusion of human activity in the buffer zone of wetlands and surface waters;
- C. Prevent the expenditure of municipal funds for the purposes of providing and or maintaining essential services and utilities that might be required as a result of the destruction or degradation of wetlands or surface waters.
- D. Protect the highest value wetlands as determined by wetland assessment

4.0 Definitions

Alteration

Any change or modification of land, water, vegetation, or existing structure in a wetland and /or its buffer area.

Authorized Agent

A person designated by a municipal board to carry out the duties, functions, and purpose of said board

Best Management Practices

As promulgated by the state of New Hampshire, measures or practices used to minimize impacts on wetlands and water resources, such as those used to control erosion, reduce sedimentation, or prevent other forms of water quality degradation.

Certified Soil Scientist

A person who, by reason of his special knowledge of pedagogical principles acquired by professional education and practical experience, as specified by RSA 310-A: 84(I), is qualified to practice soil science, and who has been duly certified by the State Board of Natural Scientists.

Certified Wetland Scientist

A person who, by reason of multi-disciplinary expertise in wetland science acquired by professional education and practical experience, as specified by RSA 310-A: 84(II-a), is qualified to practice wetland science, and who has been duly certified by the State Board of Natural Scientists.

Contiguous

Immediately adjacent to, or, in the case of surface water or wetlands, hydrologically connected in a direct and proximal way – i.e. damage or degradation to one resource will likely cause damage or degradation to the contiguous resource.

Drainageway

The channelized extent of flowing water such as a river or stream, plus the adjacent upland banks that define maximum water levels during a flood event.

Dredge

To dig, excavate, or otherwise disturb the contour or integrity of sediments in the bank or bed of a wetland or surface water body.

Hydric Soils

Soils that are saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part, as defined by the USDA Soil Conservation Service; National Technical Committee for Hydric Soils.

Hydrophytic Vegetation

Plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of inundation and/or saturation.

Mean High Water Mark

Also “ordinary high water mark,” or “natural mean high water level,” the highest average level of water in certain wetlands and most surface water bodies, as evidenced by water marks on trees or rocks, the limit of natural, upland vegetation along a shoreline, or the lower edge of floodwater debris. [Note: for state-designated “great ponds,” synonymous with “reference line.” See:

<http://www.des.state.nh.us/cspa/faqs.htm#reference> or
<http://www.des.state.nh.us/Dam/DamRemoval/NMHW.pdf>]

Pollution

The contamination or alteration of the physical, biological, or chemical properties of wetland or water resources from the discharge or deposition of any waste or other materials. This includes, but is not limited to, sewage and sediment.

Poorly Drained Soils

Soils in which water moves so slowly that the water table remains at or near the ground surface for a large part of the year (6-9 months) as defined by the National Cooperative Soil Survey.

Prime Wetlands

Wetlands that are of substantial significance to society due to their “size, unspoiled character, fragile condition, or other relevant factors,” and which have been designated as Prime Wetlands under RSA 482-A:15.

Special Use Permit

A permit that may be granted by the Planning Board for a use not otherwise permitted under the Wetlands Ordinance.

Surface Waters

“Waters of the state,” as defined by RSA 482A:4, which have standing or flowing water at or above the surface of the ground. This includes but is not limited to rivers, streams, lakes, and ponds.

Toxic and Hazardous Materials

Any materials and/or substances that are regulated under the NH Solid Waste Rules, Administrative Rules Env-Ws 100-300 and Env-Ws 2100-2800 administered by the NH DES Waste Management Division.

Vernal Pool

An ephemeral body of water that is typically isolated from other wetlands or surface waters, lacks fish and supports a specialized suite of amphibians and invertebrates. Documentation of the presence of a vernal pool includes but is not limited to direct, on-site evidence of one or more of the following: 1) breeding wood frogs (*Rana sylvatica*); 2) breeding mole (*Ambystomid*) salamanders; 3) fairy shrimp.

Very Poorly Drained Soils

Soils in which water is removed from the soil so slowly that the water table remains at or on the ground surface for the greater part of the year (9-10 months) as defined by the National Cooperative Soil Survey.

Wetlands

Those areas that are inundated or saturated by surface or groundwaters at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs, and similar areas.

Wetland Buffer

An area adjacent to wetlands that, in its undisturbed and natural condition, is integral to the performance and protection of wetland functions and values.

Wetland Functions

The capacity of a wetland to perform various services that benefit society and/or the natural ecosystem surrounding the wetland. Wetland functions include but are not limited to the following:

- 1) Ecological Integrity
- 2) Wildlife Habitat
- 3) Groundwater Recharge/Discharge
- 4) Sediment & Toxicant Removal & Attenuation
- 5) Floodwater Storage & Dissipation of Erosive Forces
- 6) Production Export
- 7) Education/Scientific Research
- 8) Visual & Aesthetic Quality

Wetlands Hydrology

In general terms, permanent or periodic inundation or soil saturation sufficient to create anaerobic conditions in the upper part of the soil and support hydrophytic vegetation.

5.0 Wetlands Conservation Overlay District Defined

The Wetlands Conservation Overlay District shall include both wetlands and wetland buffers as described below.

A. Wetlands

1. Identification of Wetlands
 - a. Wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetland hydrology in accordance with the techniques outlined in the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, (January 1987) and the Regional Supplement to the Corps of Engineers Manual: Northcentral and Northeast Region (Version 2.0, January 2012).

- b. Delineation based on hydrophytic vegetation or hydric soils alone shall be sufficient for minor subdivisions provided the vegetation or soil has not been disrupted by artificial planting or past alterations.
- c. The hydric soils component of a delineation produced under A or B above shall be determined in accordance with the manual, Field Indicators for Identifying Hydric Soils in New England (Version 3, June 2004, or later version), published by the New England Interstate Water Pollution Control Commission.

2. Wetlands Incorrectly Delineated

- a. Where it is determined that an area has been incorrectly delineated as a wetland or that an area not so designated was subsequently found to meet the criteria for wetlands designation, the Planning Board shall determine whether the regulations contained herein apply.
- b. The Planning Board shall make its judgment under this section upon the determination by a qualified soil or wetland scientist on the basis of additional on-site investigations or other suitable research. This evidence shall be acceptable only when presented in written form to the Planning Board. Any investigation or study deemed necessary by the Planning Board shall be conducted at the expense of the landowner, applicant or developer.
- c. The Planning Board and Conservation Commission may accept the comments, evidence, or testimony of any other qualified individual, agency, or organization as is reasonably offered in the course of its review.

B. Wetland Buffers

- 1. Buffer areas shall be required for all wetlands. All buffers shall be measured at a horizontal distance from the wetland boundary. The width of the wetland buffer shall be 100 feet from the boundary of all prime wetlands. For all remaining wetlands, the width of the wetland buffer shall be 25 feet. The latter shall not apply to documented vernal pools, whose buffer area shall be the immediate sub-watershed of the vernal pool, and in all cases a distance of at least 100 feet from the mean high water mark of the vernal pool.
- 2. Wetland buffers shall be retained in their natural condition. Where wetland buffer disturbance has occurred during construction, regrading to original contours and revegetation shall be required.

6.0 Permitted Uses

With exception of A, B and G in association with Prime Wetlands, the following uses are permitted in all wetlands and wetland buffers provided that (a) they are consistent with the purposes and intent of this ordinance; (b) they do not involve the erection or construction of a building or structure; (c) they do not involve the grading or recontouring of the land; (d) no draining, dredging, filling or change in the flow of water will result; and (e) the activity will not result in the pollution of wetlands, surface water, or groundwater.

- A. Logging operations which (a) utilize best management practices as described in Best Management Practices for Erosion Control on Timber Harvesting Operations in NH; (b) comply with all applicable state laws including but not limited to: obtaining and filing an intent to cut form according to RSA 79:10 and filing a complete Notification of Forest Management Activities Having Minimum Wetlands Impact according to RSA 482-A.
- B. Agricultural activities and operations as defined in NH RSA 21:34a and as governed by RSA 430, provided such activities and operations are in conformance with the most recent best management practices determined by the US Department of Agriculture Natural Resource Conservation Service, the NH Department of Agriculture, and/or UNH Cooperative Extension.
- C. Outdoor recreational activities including hunting, hiking, fishing, swimming, and boating.
- D. Wildlife or fisheries management activities;
- E. Educational activities and scientific research
- F. Conservation of open space
- G. Activities incidental to normal ground maintenance around a residence, including mowing, trimming of vegetation and removal of dead or diseased vegetation, In the state-recognized shore land district, said maintenance shall be subject to the restrictions of RSA 483-B, the Comprehensive Shoreland Protection Act, as amended. This shall not include the regrading or recontouring of land or the clearing of vegetation.

No person shall conduct or maintain other uses without first obtaining a Special Use Permit.

7.0 Prohibited Uses

- A. The establishment or expansion of:
 - 1. salt storage sheds;

2. automobile junk yards;
 3. solid or hazardous waste facilities;
- B. The bulk storage of chemicals, petroleum products, or toxic and hazardous materials;

8.0 Uses Requiring a Special Use Permit

The following uses in Wetlands and Wetland Buffers shall require a Special Use Permit:

- A. Activities that alter or remove soils or vegetation including, but not necessarily limited to, land clearing, dredging, draining, or filling.
- B. Activities that alter the natural drainage system resulting in a change in the flow of water, water level or water table.
- C. The construction or alteration of structures, streets, roads, and other access ways and utility right-of-way easements, including powerlines and pipelines.
- D. Water impoundments for the purpose of creating a waterbody for wildlife, on-site detention of stormwater runoff and/or recreational uses.
- E. Timber harvesting and agricultural activities as described in Section 7.0 above that occur inside of or within 100 feet of a designated Prime Wetland

9.0 Standards for Granting a Special Use Permit

A. Administration

1. The Planning Board shall be responsible for the administration of the Special Use Permit. The Planning Board shall hold at least one public hearing after sufficient public notice during the Special Use Permit review. The application shall be referred to the Conservation Commission for review and comment at least 30 days prior to the public hearing. The Planning Board shall review the application within 90 days of the public hearing, unless the applicant and the Planning Board agree to an extension for a set period of time.
2. Any person found to be conducting or maintaining an activity without the prior authorization of the Planning Board, or violating any other provision of this ordinance, shall be subject to the enforcement proceedings and penalties prescribed in section 10.0 of this ordinance and any other remedies provided by law.

3. If granted, the Special Use Permit shall be valid for a period of two years from the date of issue and shall expire if not implemented by that time, unless a longer period is specified and approved by the Planning Board in consultation with the Conservation Commission.

B. Application Requirements

Applications for a Special Use Permit shall include the following:

1. Site Plan at a scale of 1"=100' or larger indicating the following:
 - a. Lot or lots of record to be impacted;
 - b. Names and addresses of abutting property owners;
 - c. Wetlands delineation, and name of person(s) or agency performing said delineation;
 - d. Shading and computation of the area to be impacted;
 - e. Soil type(s) (in accordance with Site Specific Soil Mapping Standards for New Hampshire and Vermont (June 1997, as amended), within NCSS mapping standards developed by the USDA Soil Conservation Service in Cooperation with the Soil Society of Northern New England.);
 - f. Vegetation types;
 - g. Location of all drainageways and surface water bodies in vicinity of project area;
 - h. Other significant natural features;
 - i. Proposed land use/activities, including stormwater management structures as needed;
2. Project report including the following:
 - a. USGS topographic map showing location of proposed impact area
 - b. Photographs mounted on 8.5 x 11" white paper of proposed impact area
 - c. Description of the ecological communities;
 - d. Description of wetland functions;

- e. Effects of the impact on the wetland and its functions;
- f. Measures taken to minimize the impact;
- g. Proposed land use/activities, sediment and erosion control plan, and monitoring and mitigation plan as required by the NH Department of Environmental Services;

The site plan submitted for a subdivision or site plan review application to the Planning Board is acceptable if it meets all of the above requirements.

10.0 Enforcement

- A. The Planning Board is hereby authorized and empowered to adopt such rules and require such reasonable fees as are necessary for the efficient administration of this ordinance.
- B. The Selectmen or their appointed agent shall be responsible for enforcement of the provisions of this ordinance.
- C. Upon any well founded information that this ordinance is being violated, the Planning Board or Conservation Commission, shall report the violation to the Selectmen. Upon receipt that this ordinance is being violated, the Selectmen or their appointed agent shall notify, in writing, the owner or tenant of the property on which the violation is alleged to occur with a copy of such notification to the Planning Board and Conservation Commission. If appropriate, the Selectmen shall also notify the NH Wetlands Bureau, U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, or such other State or Federal Agency as may have jurisdiction of the violation.
- D. Any person in violation of this ordinance or portion thereof, shall be penalized in accordance with NH RSA 676:15-17.

11.0 Conflict with Other Regulations

Where any provision of this ordinance is in conflict with any other municipal ordinance, or state or Federal regulation, the more stringent provision shall apply.

12.0 Special Provisions – Prime Wetlands

By virtue of the “size, unspoiled character, fragile condition, or other relevant factors,” according to RSA 486-A:15, and the findings of the 2011-12 *Grantham Wetlands Inventory and Assessment Project* sponsored by the Grantham Conservation Commission, the following wetlands in the Town of Grantham are designated as Prime Wetlands:

Chase Pond
Upper Dunbar Hill Road Beaver Pond
Bog Brook
Lily Pond
Grasas Pond West
Upper Stroing Brook
Lower Eastman Brook
Stocker Pond