

## **Section 8 – Wetlands and Surface Water Overlay District**

### **8.1 Purpose and Intent**

The purpose of the Wetlands and Surface Water Overlay District is to protect the public health, safety and general welfare. The Wetlands and Surface Water Overlay 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;
- 8.1.4 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**

**Fill:** Defined as a verb, means to place or deposit materials in or on a wetland, surface water body, bank or otherwise in or on an area within the jurisdiction of the department (Env-Wt 101.43). Defined as a noun, means any rock, soil, gravel, sand or other such material that has been deposited or caused to be deposited by human activity (Env-Wt 101.42).

**Hazardous Materials:** Hazardous materials means “hazardous waste” as defined in RSA 147-A:2, VII, namely “a solid, semi-solid, liquid or contained gaseous waste, or any combination of these wastes (Env-Hw 103.62):

- (a) Which, because of either quantity, concentration, or physical, chemical, or infectious characteristics may: (1) Cause or contribute to an increase in mortality or an increase in irreversible or incapacitating reversible illness; or (2) Pose a present or potential threat to human health or the environment when improperly treated, stored, transported, disposed of or otherwise mismanaged; or
- (b) Which has been identified as a hazardous waste by the department using the criteria established under RSA 147-A:3, I or as listed under RSA 147-A:3, II. Such wastes include, but are not limited to those which are reactive, toxic, corrosive, ignitable, irritants, strong sensitizers or which generate

pressure through decomposition, heat or other means. Such wastes do not include radioactive substances that are regulated by the Atomic Energy Act of 1954, as amended.”

**Prime Wetlands:** are defined as any wetlands within the jurisdictional definitions or RSA 482-A:3 and RSA 482-A:4 that possess one or more of the values set forth in 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 and the map is included on the last page of Section 8.

#### 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	undetermined
6	Taylor River Complex (Central)	244.9 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

**Reference Line:** For coastal and tidally influenced waters it is the highest observable tide line; for rivers it is the ordinary high water mark and for lakes and ponds it is the surface elevation listed on the Consolidated List of Waterbodies subject to the State Water Quality Protection Act (SWQPA).

**Setback:** Is the area as measured from the edge of the wetland or surface water boundary to a structure and within which building and construction activity is prohibited.

**Surface Waters:** Rivers, intermittent and perennial streams, lakes, and ponds, within the jurisdiction of the town, including all portions of rivers, streams, lakes, and ponds in the town,.

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

**Vegetated Buffer:** An area of upland: measured perpendicularly from the outermost boundary of non-tidal wetlands, from the reference line of coastal tidally influenced wetlands and surface waters; retained in its natural state (no disturbance to land surface or vegetation) or replanted with native non-invasive vegetation ; and for the purpose of protecting the ecological integrity and function of these resources and allowing for periodic flooding without damage to structures.

**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*, (NH Fish and Game, Nongame and Endangered Wildlife Program, 2004 as updated).

**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, vernal pools, marshes, bogs, and tidal wetlands.

### **8.3 Wetland and Surface Waters Overlay District Boundaries**

The requirements of this ordinance are applicable to the entire Town of Hampton Falls and include all surface waters, prime wetlands, wetlands, poorly drained soils and very poorly drained soils.

Delineation Requirements: The precise location of a wetland boundary, poorly drained soils and very poorly drained soils must be determined by on-site evaluation 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 and Surface Waters Overlay District**

#### **8.4.1 Prohibited Uses**

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

8.4.1.1 Any structure, impermeable surface or parking space.

8.4.1.2 Waste, septage, manure or sludge disposal.

8.4.1.3 Storage of gasoline, fuel oil, road salt, pesticides, herbicides, or other hazardous materials.

8.4.1.4 Excavation except in the case of maintenance of man-made detention basins, drainage ways and treatment swales.

#### **8.4.2 Permitted Uses**

The following uses are permitted in the Wetlands and Surface Waters Overlay District.

8.4.2.1 Agriculture, including grazing, crop production and construction of fences using *Best Management Wetlands Practices for Agriculture* (NH Department of Agriculture July 1993 – Amended September 1998, as updated) 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* (NH Division of Forests and Lands, 2004 as amended.) This permitted use includes the construction of a permeable access road for said purpose.
- 8.4.2.3 Wildlife habitat enhancement and management using best practices from *Landscaping at the Water's Edge: An Ecological Approach* (UNH Cooperative Extension, 2007).
- 8.4.2.4 Passive non-motorized recreational uses consistent with the purpose and intent of the Section.
- 8.4.2.5 Conservation areas and nature trails for passive, non-motorized recreation using *Best Management Practices for Erosion Control during Trail Maintenance and Construction* (NH Department of Resources and Economic Development, Division of Parks and Recreation, Bureau of Trails, 2004 as updated).
- 8.4.2.6 Residential and or Commercial uses by Special Exception as provided for in 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 and Buffers**

### **8.5.1 State Requirements**

8.5.2.1 Surface waters (3<sup>rd</sup> order rivers and higher, lakes and great ponds) and coastal waters are subject to the requirements of the State Water Quality Protection Act (SWQPA). In Hampton Falls, surface waters subject to the SWQPA include the Taylor River, Hampton Falls River and coastal tidally influenced waters. The SWQPA defines specific three shoreland zones which are measured from the reference line: a 250-foot protected shoreland, a 50-150 foot Natural Woodland Buffer, and a 0-50 foot Waterfront Buffer. Each shoreland zone is subject to specific standards including but not limited to impervious surface cover, removal of vegetation, setbacks for structures and septic systems, and application of pesticides and herbicides.

8.5.2.2 Coastal waters and Prime Wetlands are state jurisdictional areas subject to a 100-foot prime wetland buffer (RSA 482-A). A permit from the NHDES Wetlands Bureau is required for “excavating, removing, filling, dredging or constructing structures within jurisdictional areas”. Wetlands permits within the 100-foot tidal buffer are also subject to compliance with the requirements of the SWQPA.

8.5.2, The setbacks and vegetative buffers in the following table are established to protect the integrity and functionality of wetlands and surface waters.

Setback and Buffer Requirements for Wetlands and Surface Waters

<b>Resource</b>	<b>Size of Resource</b>	<b>Relationship to Surface Waters</b>	<b>Minimum Setback</b>	<b>Vegetative Buffer</b>
Prime Wetlands, Coastal waters and tidally influenced wetlands	Any size	n/a	100 feet	State Statutes Apply
Surface Waters (not subject to the SWQPA) *	Any size	---	100 feet	10 feet
Vernal Pools	Any size	n/a	100 feet	10 feet
Non-Tidal Wetlands, Poorly and Very Poorly Drained Soils**	Any size	Contiguous with Surface Waters (not subject to the SWQPA)	75 feet (or 100 feet from surface waters, whichever is greater)	10 feet
Non-Tidal Wetlands, Poorly and Very Poorly Drained Soils**	Greater than 5,000 square feet	Not Contiguous with Surface Waters	50 feet	0 feet
Non-Tidal Wetlands, Poorly and Very Poorly Drained Soils**	Less than 5,000 square feet	Not Contiguous with Surface Waters	25 feet	0 feet
Man-Made Wetlands: Ponds, Detention Basins, Drainage Ways and Treatment Swales***	Any size	Not Contiguous with Surface Waters	10 feet	0 feet

\* For coastal tidally influenced wetlands (RSA 482-A) and surface waters that fall under the Shoreline Water Quality Protection Act (RSA 483-B) the standards in those statutes shall apply (see section 8.5.1).

\*\* For poorly and very poorly drained soils adjacent to non-tidal wetlands, prime wetlands, vernal pools or surface waters, the larger setback required for these resources shall apply.

\*\*\* Setbacks and vegetative buffers shall be measured from the functional boundary of the stormwater management structure or man-made wetland.

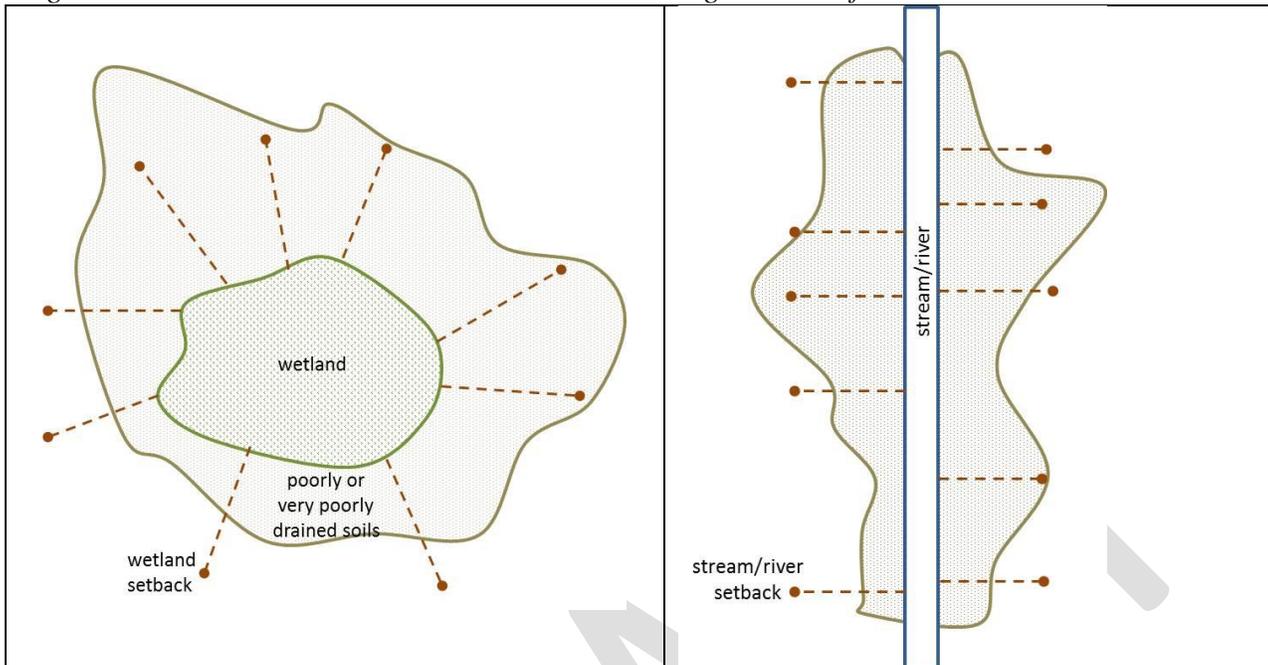
Example of Setbacks Applied For Poorly and Very-Poorly Drained Soils

The graphic below shows how setbacks are applied from poorly and very poorly drained soils when adjacent to wetlands and surface waters. For example, when poorly or very poorly drained soils extend outside the

minimum setback required for wetlands and surface waters, the setback is extended to include all of the poorly and very poorly drained soils.

Figure A: Wetland Setbacks

Figure B: Surface Water Setbacks



## 8.6 Special Use Permits

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. Applications for a Special Use Permit must include the precise location of wetland boundaries and type, poorly drained soils and very poorly drained soils as 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 outside the 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, setback or buffer 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 Before grant 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 wetland impact assessment shall be based on a functional evaluation of the resource, before and after proposed development of the site, using the reference *The Method for Inventorying and Evaluating Freshwater Wetlands in New Hampshire* (NH Method, 2013 as updated). 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 investigative studies and for the review of documents required by particular applications.

## **8.7 Special Exceptions**

Upon application to the Zoning Board of Adjustment, a special exception shall be granted to permit the erection of a structure within the Wetlands and Surface Water Overlay District on 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.
- 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 and Surface Water Overlay 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 practicable, 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**

- 8.8.1 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. A

plan showing extent of wetlands, setbacks and vegetative buffers shall be submitted to and reviewed by the Building Inspector. The person applying for a building permit shall gather information necessary to demonstrate compliance with the requirements of this Ordinance. Additional information may be requested at the discretion of the Building Inspector.

8.8.1.2 Multifamily and Non-Residential Development Applications – The Building Inspector shall rely on the Planning Board for determination of compliance with this Ordinance as part of the review process for applications subject to the Subdivision and Site Plan Review Regulations.

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**

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**

In the event that the Wetlands and Surface Water Overlay 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.