

ARTICLE # ____
AMENDMENT # ____

Hampton Zoning Ordinance Amendment

Article II – Districts, Section 2.3 - Wetlands Conservation District

~~Strikethrough~~ = Proposed Deletion

Underline = Proposed Addition

Highlighting = All Proposed Changes

Section 2.3 Wetlands Conservation District (Amended March 2023)

2.3.1 PURPOSES. In the interest of protecting the public health, safety and welfare the Wetlands Conservation District (WCD) has been established to protect, preserve and prevent the despoliation and unregulated alterations of 1) tidal and freshwater wetlands, 2) areas of very poorly drained soils and poorly drained soils, 3) vernal pools, and 4) 1st through 4th Order Streams, and 5) their buffers. It is in the public interest to protect the valuable functions these areas provide such as habitat for fish, wildlife and flora, ground water protection, storm water and flood control, nutrient and pollutant filtering, recreation and aesthetic enjoyment. (Amended March 2005, March 2012, March 2016)

The Wetlands Conservation District is intended to:

- A.** Prevent the destruction and preserve the integrity and health of wetlands and areas of very poorly drained soils and poorly drained soils and their buffers, all of which provide flood protection, connection to the ground or surface water supply, filtration of water flowing into ponds and streams, and augmentation of stream flow during dry periods; (Amended March 2012)
- B.** Prevent the development of structures and land uses on wetlands, areas of very poorly drained soils and poorly drained soils, and their buffers, which would contribute to pollution of surface and ground water by sewage or other wastes or toxic materials; (Amended March 2012)
- C.** Prevent unnecessary or excessive expense to the Town for provision and maintenance of essential services and utilities;
- ~~D. Deleted. (Amended March 1998)~~**
- E.** Protect wildlife habitat, including amphibian and invertebrate breeding habitat (i.e. vernal pools), maintain ecological balance and enhance ecological values; (Amended March 2015)
- F.** Preserve and enhance the aesthetic values associated with wetlands and areas of very poorly drained soils and poorly drained soils and their buffers in Hampton; (Amended March 2012)
- G.** Prevent construction or earth moving activities in wetlands and their buffers, which could impact adjacent property. (Amended March 1998)

2.3.2 DEFINITIONS AND DELINEATIONS. Detailed descriptive materials and maps of wetlands and wetlands soils and flora in the Town of Hampton are found in the reports listed in the Appendix to this section and are incorporated herein by reference.

- A. The Wetlands Conservation District (WCD)** includes tidal wetlands, freshwater wetlands, areas of very poorly drained soils and poorly drained soils **including vernal pools**, 1st through 4th order streams or rivers and their buffers. In case of any question, the precise location of a wetland boundary or stream edge in any particular case must be determined by on-site inspection of soil types and vegetation **by a Certified Wetland Scientist**. Any more detailed or updated study accepted by the Hampton Planning Board upon recommendation of the Conservation Commission shall supersede the Soils Conservation Service study where it is shown to be incomplete or inaccurate. (Amended March 1998, March 2012)
- B. Tidal Wetlands** are defined and delineated as: the wet side of the “Highest Observable Tide Line” (HOTL) edge which is a line defining the furthest landward limit of tidal flow, not including storm events, that can be recognized by indicators such as the presence of a strand line of flotsam and debris, the landward margin of salt-tolerant vegetation, or a physical barrier that blocks further inflow of the tide. In a given case, the HOTL shall be identified, documented, and mapped by an appropriate **NH** Certified Wetland Scientist. Examples of tidal wetlands include, but are not limited to the Atlantic Ocean, Hampton Harbor, and the Hampton Salt Marsh Complex. (Amended March 2005, March 2012, March 2020)
- C. Freshwater Wetlands** means an area that is inundated or saturated by surface water 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. Examples include, but are not limited to, non-tidal portions of ponds, rivers and streams. (Amended 2005, March 2016, March 2020)
- D. 1ST Through 4TH Order Streams or Rivers** are defined as Ash Brook, Drakes River, Little River, Nilus Brook, Old River, Taylor River, and Winnicut River.
- E. Areas of very poorly drained soils and poorly drained soils**

 - 1. Very poorly drained soils are those soils in which water is removed from the soil so slowly that the water table remains at or on the ground surface most of the year. Very Poorly drained soils shall be classified in accordance with the most recent definitions, standards, and procedures of the Society of Soil Scientists of Northern New England. (Amended March 2015)
 - 2. Poorly drained soils are those soils in which water is removed so slowly that the soil remains wet for a large part of the year. A poorly drained soil has a water table near the ground surface that keeps the soil wet for seven to nine months of the year. Poorly drained soils shall be classified in accordance with the most recent definitions, standards, and procedures of the Society of Soil Scientists of Northern New England. (Amended March 2015)
- F. Vernal Pool** is a confined basin depression that, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, provides essential breeding habitat for certain amphibians and invertebrates, and is free of adult fish populations. A vernal pool must support one or more primary vernal pool indicators, or 3 or more secondary vernal pool indicators as described in Identification and Documentation of Vernal Pools in New Hampshire, 2nd Ed., 2004 published by the NH Fish and Game Department. (Adopted March 2015)
- G. Buffer, **also referred to as wetland buffer zone**,** is the area extending:

1. fifty feet (50 ft.) out from the boundary line of any tidal or freshwater wetland, and/or areas of very poorly drained soils and poorly drained soils, and/or vernal pools or
2. one hundred feet (100 ft.) out from the edge of any of the following 1st through 4th order streams* or rivers: Ash Brook, Drakes River, Little River, Nilus Brook, Old River, Taylor River, and Winnicut River. *(Appendix 7 – Strahler, 1957) The buffer is intended to provide a natural vegetative zone between the upland and any tidal or freshwater wetland, area of very poorly and poorly drained soils, and vernal pool for water filtration, storm water retention, flood protection and wildlife. (Amended 2005, March 2012, March 2016, March 2020)

H. The Hampton Salt Marsh Complex as mapped in Exhibit 27 in the February 8, 2006 “Prime Wetland Inventory Report” by Gove Environmental Services, Inc. and as later also described in said Report under Recommendations for Hampton Prime Wetlands, is hereby designated a prime wetland for purposes of RSA 482-A:15 and Department of Environmental Services regulations, effective 2011. (Amended March 2009, 2012, 2023)

I. Mitigation means the measures that offset or counter the adverse environmental effects that developing or permanently disturbing land may have on the WCD. (Adopted March 2020)

J. Temporary Impacts means adverse conditions or effects that will be reversed within 1 year or when the authorized work has been completed and pre-construction conditions have been re-established. The term includes but is not limited to ruts caused by heavy machinery, access ways, storage areas, and the installation and subsequent removal of swamp mats, construction mats, geotextile fabric, or other erosion or sediment control practices.

K. Permanent Impacts result from activities that are intended to remain, or that do remain, after the activities have ceased. These include areas that are altered, excavated, dredged or filled to a state that is irreversible. Permanent impacts include but are not limited to construction of a new or altered structure, installation of new impervious surface, grade changes, fill associated with a wetland or stream crossing, bridge abutments, and excavation associated with ponds, ditches and channels. Impacts that are sustained for longer than 1 year are considered to be permanent unless otherwise discussed during the permitting process.

2.3.3 ALLOWABLE USES. Uses permitted in the wetland buffer zone Wetlands Conservation District are those which do not result in the alteration of the land surface configuration by a) dredging, b) adding fill, c) the erection or placement of any temporary or permanent structure or d) increasing the amount of impervious surface within the Wetland Conservation District. (Amended March 2012; March 2015, March 2020, 2023)

A. The following uses are allowable in the wetland buffer only WCD as defined in subsection 2.3.2 **G A-1-8**. Additional exceptions or permitted uses for freshwater wetlands, very poorly and poorly drained soils, and 1st through 4th order streams are set forth in Sections 2.3.3 B and 2.3.3D.

1. Forestry and tree farming may be performed provided with the understanding that best management practices, including leaving all stumps intact, are used to minimize siltation and protect wildlife habitat. (Amended March 2012; March 2015)
2. The cutting of live trees with a diameter of four and one-half (4-1/2) inches or less, measured four and one-half (4-1/2) feet above ground level, however this does not apply to the first 25 feet from the edge of a 1st through 4th order stream (see Section 2.3.3 C-1 for vegetation

- removal). Removal of dead, diseased or unsafe trees is permitted. Stumps and their root systems shall be left intact in the ground. (Amended March 2015)
3. Agriculture, such as harvesting marsh hay and gathering cast-up for fertilizer, provided that heavy equipment shall not be used in the WCD.
 4. Wildlife refuge, conservation areas and nature trails.
 5. Educational and passive recreational uses compatible with the purposes forth in Section 2.3.1.
 6. Landscaping: Per review by the Conservation Coordinator and provided that the Building Inspector determines that:
 - a. The area to be landscaped has been previously disturbed or cleared or is maintained as a lawn or beach;
 - b. The disturbed or cleared area is not being expanded;
 - c. The proposed landscaping will not be contrary to the spirit or intent of the WCD Ordinance. (If the Building Inspector determines that the proposal is not consistent with the purposes of the WCD Ordinance, the proposed activity shall only be permitted if the landowner obtains an approved Town Wetlands Permit.
 7. A new fence, or deck may be located within the wetland buffer zone provided that:
 - a) The proposed construction has been reviewed by The Conservation Coordinator and Building Inspector.
 - b) Fences are installed using hand tools and are 6 inches off the ground to allow for flow of water.
 - c) Decks are elevated a minimum of 6 feet off the ground, are constructed with planks not greater than 8 inches in width with a minimum ¼ inch space between each plank, and the area underneath remains entirely pervious with no use as a storage area. See DEFINITION of Impervious Surface. Any additional impervious surface below 6 ft such as stairs or a landing area will require a Town Wetlands Permit. See DEFINITION of Impervious Surface.
 8. Replacement or repair of an existing structure (including but not limited to sheds, decks, and homes); provided that:
 - a) The structure has a previously approved Town Wetlands and/or Building Permit;
 - b) The square footage of temporary and/or permanent impacts on the parcel is not increasing or encroaching further into the WCD;
 - c) The proposed work will not be contrary to the spirit or intent of the WCD Ordinance. (If the Building Inspector determines that the proposal is not consistent with the purposes of the WCD Ordinance, the proposed activity shall only be permitted if the landowner obtains an approved Town Wetlands Permit).
- B.** The following additional uses are **allowed permitted** in freshwater wetlands and areas of poorly and very poorly drained soils and their buffers. (Amended March 2016)
1. Construction of wells for water supply and water impoundments constructed pursuant to plan approved by the Rockingham County Conservation District.
- C.** The following uses are **allowed permitted** in the one hundred foot (100 ft.) buffer for 1st through 4th order streams or rivers as defined in Section 2.3.2: (Amended March 2016)
1. In the first twenty-five feet (25 ft.) from the nearest edge of the stream or river (known as the Vegetated Buffer Strip):

- a) the cutting of invasive species only with hand tools, and
 - b) the application of limestone
 2. Between twenty-five feet (25 ft.) and seventy-five feet (75 ft.) from the nearest edge of the stream or river (known as the Limited Cut Area):
 - a) the cutting of invasive species, and
 - b) the application of limestone
 3. Between seventy-five feet (75 ft.) and one hundred feet (100 ft.) from the nearest edge of the stream or river:
 - a) the application of low phosphate, slow release nitrogen fertilizers, and
 - b) the cutting of invasive species
 4. Construction of wells for water supply and water impoundments constructed pursuant to a plan approved by the Rockingham County Conservation District.
- D.** Other **low density** uses in **the buffer, not explicitly stated WCD as defined** in this Ordinance may be undertaken, **in consultation with the Conservation Coordinator**, only by Wetlands Permit as provided in Section 2.3.5 of this Ordinance. (March 2020)

2.3.4 USES REQUIRING A WETLAND PERMIT, PROHIBITED USES, AND OTHER STANDARDS (Amended March 2012, March 2019, March 2022, March 2023)

A. By Wetlands Permit Only – The following criteria shall be evaluated, and the associated uses may only be undertaken following approval of a Wetlands Permit by the Planning Board to ensure that the integrity and health of the Wetlands Conservation District is not compromised by additional impervious surface or other activities of environmental concern, and that any increase in impervious surface is offset by approved mitigation. Prior to the approval of any restricted use, the Planning Board shall determine that the activity is necessary to maintain the legal pre-existing use of the property and/or is consistent with the spirit and intent of the Wetlands Conservation District Ordinance.

1. By Wetlands Permit only, seawalls (including access structures), fences, footbridges, catwalks, and wharves may be constructed **or repaired on tidal wetlands within the WCD** and must be constructed on posts and pilings (except seawalls) such as to permit the unobstructed flow of the **watertide** and preserve the natural vegetation and contour of the **tidal** wetlands. (Amended March 1998, March 2012, March 2015)
2. By Wetlands Permit only, drainage ways as paths for normal runoff provided that they are constructed according to drainage plans, consistent with the purposes of the WCD Ordinance. (Amended 1998, March 2012, March 2015)
3. By Wetlands Permit only, roads, driveways, access ways, utilities, and power lines may be constructed in the WCD provided that the following conditions exist: (Amended March 2015)
 - a) Proposed construction is essential to the productive use of uplands outside the WCD;
 - b) Design and construction methods will be such as to minimize any impact in the WCD, and will include restoration of the site as nearly as possible to its original grade and vegetative condition;
 - c) An alternative with less impact, which does not cross a wetland or buffer, is not feasible;
 - d) The crossing will be at the point of least impact to the WCD; (Amended 2001)(Amended March, 1998, March 2012)

4. By Wetlands Permit Only, temporary impacts within the wetland buffer zone provided that the following conditions are met:

- a) Impacts are fully restored to pre-construction condition or better within 1 year of construction beginning unless otherwise outlined during the permit process.
- b) Impacts are essential to the productive use of uplands outside the WCD.
- c) Design and construction methods will be such as to minimize impact in the WCD, and
- d) An alternative with less impact, which does not impact a wetland or buffer, is not feasible;

B. Prohibited Uses – The following uses are prohibited in the Wetlands Conservation District. In the event that a variance is granted by the Zoning Board of Adjustment to allow a prohibited use, the approval of a Wetlands Permit by the Planning Board may also be required.

1. A new septic system, leach field or other on-site waste disposal facility located within seventy-five (75) feet of the edge of any wetland, or any area of very poorly drained soils and poorly drained soils.

2. Except as provided in Sections 2.3.3 A 7 and Section 2.3.4 A above, no structure, impervious surface, parking space or building activity including dredging, filling, or regrading shall be permitted within fifty (50) feet of any tidal or inland wetlands, or any area of very poorly drained soils and poorly drained soils or vernal pool, or within seventy-five (75) feet of the 1st through 4th order streams (as identified in Section 2.3.2 E).

3. Replaced or repaired structures, including any impervious surface, shall not extend further into the buffer area than the footprint that legally exists at the time of application, nor shall it increase the amount of square footage of impervious surface in the buffer area.

4. The application of mulch in any tidal or inland wetlands, areas of poorly or very poorly drained soils, vernal pools, the 1st through 4th order streams as identified in Section 2.3.2 E, or their buffers.

4 5. The application of fertilizers, pesticides, insecticides, or herbicides in any tidal or inland wetlands, areas of poorly or very poorly drained soils, vernal pools, the 1st through 4th order streams as identified in Section 2.3.2 E, or their buffers.

a) Select fertilizers, pesticides, insecticides, or herbicides may be used in the WCD for the purposes of a restoration or vegetation management project if the applicator is licensed by the State of NH (as needed for certain products) and/or the project is taking place on Town-owned land and the Board of Selectmen have approved the work.

5 6. The storage of yard waste, wood, or snow in any tidal or inland wetlands, areas of poorly or very poorly drained soils, vernal pools, or their buffers.

C. Other Standards -

1. Any construction, forestry and agriculture activities within one hundred (100) feet of any wetland, or any area of very poorly drained soils and poorly drained soils, shall be undertaken with special care to avoid erosion and siltation into the wetlands, or any area of very poorly drained soils and poorly drained soils. The Building Department or the Planning Board, pursuant to its Site Plan Review and/or Subdivision authority, Section 1.5 of the Town of Hampton

Zoning Ordinance, may require an erosion control plan using Best Management Practices (see Appendix Number 4).

2. New ~~ce~~Construction or substantial improvement of any structure including manufactured homes to be placed or substantially improved within Tidal Wetlands and/or their 50 ft Town buffer shall comply with FEMA's Guidelines ~~that the Town has adopted~~ **adopted by the Town** for the VE Special Flood Hazard Area (Section 2.4.11-C Coastal High Hazard Areas (Zone VE) – Construction Standards). The construction work shall have no adverse impacts on adjacent properties. (Adopted March 2019)
3. Where a variance is granted that enables building on a pre-existing lot of record, the setback shall be in line with the setback of existing buildings within one hundred (100) feet on either side. The furthest setback amongst buildings shall apply where buildings are set back at varying distances but closer than:
 - a) fifty (50) feet from the boundary of any tidal wetlands, inland wetlands, areas of very poorly drained soils and poorly drained soils, or vernal pools; or
 - b) one hundred (100) feet from any 1st through 4th order streams (as identified in Section 2.3.2 E),
4. In the event of failure of an existing septic system, leach field or other on-site waste disposal facility located within seventy-five (75) feet of the edge of any wetland, or any area of very poorly drained soils and poorly drained soils, the property must be tied into the town sewer system if available. If sewer is not available, an existing system may be replaced or repaired as necessary according to a design approved by the New Hampshire Water Supply and Pollution Control Division of the Department of Environmental Services. In the event the seventy-five (75) foot setback cannot be maintained, the replacement system shall meet the setback to the degree possible.

2.3.5 WETLANDS PERMITS: More intensive uses than are permitted in the Wetlands Conservation District in accordance with the terms of Section 2.3.3, or any uses that are restricted in accordance with the terms of Section 2.3.4 **A**, shall only be undertaken by Wetlands Permit by application to the Planning Board, provided that such use is in keeping with the intent and purposes set forth in this Ordinance as permitted in the underlying use district. In the event that a variance is granted by the Zoning Board of Adjustment to allow a prohibited use, the approval of a Wetlands Permit by the Planning Board may also be required. (Amended March 1998, March 2015, March 2022)

A. An application for wetlands permit for activities in the Wetlands Conservation District shall be filed with the Town Planner who shall forward one copy to the Hampton Conservation Commission for review and recommendation. The Commission may make field inspections and consult with experts and the applicant may be required to bear the cost of such consultation. The Conservation Commission shall report its recommendations to the Planning Board within 40 days of the date on which the application is mailed or otherwise conveyed to the Chairman. Said report shall be submitted in writing at a regular meeting. (Amended 1999 & 2002, March 2012, March 2015)

B. No wetlands permit shall be granted unless it is found to be consistent with the purposes set forth in Section 2.3.1 and the spirit of this Ordinance. The Planning Board as part of this application shall hold a Public Hearing and notify abutters as required under RSA 676:4. (Amended 1998, March 2015)

C. Any Wetlands Permit granted by the Board shall expire two years from the date of said grant. If the work approved by the issuance of a Wetlands Permit is not initiated during that time, the Wetlands Permit becomes null and void. If the work approved is initiated but not completed during that time, the owners may apply for a two-year extension. A request for such extension must be filed at least one month prior to the Wetlands Permit's expiration date. No more than two such extensions may be granted. (Amended March 2012, March 2015)

1. Permits associated with seawall repairs along the Atlantic Ocean expire 6 years from the date it is granted by the Planning Board. The first repair must be completed within 2 years. In-kind repairs and maintenance can be performed for the life of the permit provided that the Conservation Coordinator has been made aware of the work in writing prior to the commencement of the work.

2.3.6 DISPUTED BOUNDARIES: In any instance where there is doubt as to the location of the Wetlands Conservation District boundary the burden of proof shall be on the applicant or property owner to show the proper location of the boundary.

A. Evidence shall be obtained by onsite investigation and analysis conducted by a New Hampshire Certified Soil Scientist or other New Hampshire eCertified wWetlands sScientist. (Amended March, 1998)

B. The Planning Board shall be responsible for making the final determination of the proper location of the boundary line.

1. Before making such determination the Planning Board shall review the evidence presented and shall consider the recommendation of the Conservation Commission. Where either the Planning Board or the Conservation Commission deems it necessary, they may consult an appropriate expert to review the studies submitted by the applicant to ascertain the proper location of the boundary. The applicant may be required to bear the cost of such consultation. The Planning Board shall notify the applicant of any such review and its probable cost before any consultant is hired.

2. The Planning Board shall render its decision in writing and set forth the evidence on which its conclusion is based.

3. A change to the wetland delineation, as a result of an appeal, made under this ordinance shall be recorded on a mylar with the Rockingham County Registry of Deeds. (Amended March 1998)

2.3.7 SPECIAL PROVISIONS

A. Where the Wetlands Conservation District is superimposed over another zoning district, the more restrictive regulations shall apply.

B. Lands, which may have been wetlands but were legally filled prior to March 12, 1985 shall be judged according to the soils and flora existing at the site at the time application for building permit or subdivision is made. (Amended 1998)

C. For newly created lots and existing lots of record where the Wetland Conservation District is present, Criteria C-1 through C-4 shall apply to new created lots and Criteria C-2, C-3, and C-4 shall apply to existing lots of record. (Amended March 2012, March 2015, March 2019)

1. The minimum lot area required in the underlying zoning district or 30,000 square feet (whichever is less) shall be contiguous and outside of the Wetlands Conservation District. The