

# PROPOSED *REVISED* WETLANDS CONSERVATION ORDINANCE

Italicized words are proposed additions  
(\* ) denotes a deletion from original ordinance

## ***Title and Authority***

*This ordinance shall be known as the "Wetlands Conservation District Ordinance of the Town of Tamworth, N.H.", adopted Mar 12, 1991*

*By the authority granted in N.H.RSA 674:16 and 21, and in the interest of public health, safety and general welfare, the Tamworth Wetlands Conservation District Ordinance is hereby established to regulate the uses of lands subject to standing water, flooding, or high water tables for extended periods of time.*

## **A. Purpose and Intent**

The purpose of this Ordinance 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 subjected to standing water, flooding, high water tables for extended periods of time.

It is intended that this Ordinance shall:

1. Prevent the development of structures and land uses on naturally occurring wetlands which will contribute to pollution of surface and ground water by sewage, *sediment, or noxious* (\*) substances.
2. Prevent the destruction of, or significant changes to natural wetlands which provide flood protection.
3. Protect *rare*, unique, and unusual natural communities, *both floral and faunal*.
4. Protect wildlife habitats and maintain ecological balances.
5. Protect potential water supplies and existing aquifers (water-bearing stratum) and aquifer recharge areas.
6. Prevent expenditure of municipal funds for the purposes of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands.
7. Encourage those low-intensity uses that can be harmoniously, appropriately and safely located in wetlands.

## **B. Wetland Definitions (\*)**

*The following definitions are provided to explain the terms and phrases used within this Article.*

- 1. "Best Management Practices" - Applying the appropriate techniques to minimize disturbance and impact to the wetland resulting from those activities which will alter the natural character of the wetland.*
- 2. "Board" - The planning board of the Town of Tamworth.*
- 3. "Certified Soil Scientist" - An individual duly qualified in soil classification and mapping, certified by the New Hampshire Board of Natural Scientists under the provisions of RSA 310-A:75 et seq.*
- 4. "Commission" - The Conservation Commission of Tamworth.*
- 5. "Designated Agent" - An individual designated by the Conservation Commission to carry out its function and purpose.*
- 6. "Pollution" - Harmful thermal effect or the contamination, or rendering unclean or impure of any wetlands of the Town of Tamworth, by reason of any waste or other materials discharged or deposited therein. This includes, but is not limited to, erosion and sedimentation resulting from any filling or excavation activity.*
- 7. "Special Use Permit" - A permit for a use not otherwise permitted in the Wetlands Conservation Overlay District which may be granted by the planning board (as authorized by RSA 674:21 II) provided it meets the criteria set forth in Section E.*
- 8. "Waterbody" - areas of surface waters such as lakes, ponds, rivers, and streams as well as those drainageways which have continuous flow for at least 30 days during the growing season on an average year.*
- 9. "Wetland Scientist" - An individual duly qualified to identify, delineate, classify, and evaluate wetlands.*
- 10. "Wetlands" - those areas which possess three essential characteristics: (1) hydrophytic vegetation - macrophytic plant life growing in water, saturated soil, or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content; (2) hydric soils - soils saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part of the soil strata, and (3) wetland hydrology - permanent or periodic inundation or soil saturation to the surface, at least seasonally during the average rainfall year. These areas are those inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.*

## C. Wetlands Conservation District

### 1. District Established

Wetlands Conservation District is hereby established which contains all wetlands(\*) *and waterbodies*, as defined in paragraph B above, *and including designated Prime Wetlands*, in the Town(\*) of Tamworth. A reference report entitled Wetlands of Tamworth; An Inventory and Analysis, made for the Conservation Commission, dated January, 1980, (\*)*describes and locates* various types of wetland vegetation(\*) communities(\*). Maps may be revised from time to time as the Planning Board, in consultation with the Conservation Commission, may deem necessary and as currently accurate information is obtained. These maps and studies are on file with the Town Clerk.

### 2. Wetlands Incorrectly Delineated(\*)

*If either the applicant or the Board, in consultation with the Commission, questions the location of wetlands listed in the reference report or boundaries of the Wetlands Conservation District, as established under this article, the applicant shall engage the services of a wetland scientist and/or certified soil scientist to conduct an on-site field examination using the methodology outlined in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands", An Interagency Cooperative Publication, January 1989 to determine the precise location of the Wetland Conservation District boundaries on the affected properties. The scientist(s) shall submit a report of findings to the Board and Commission including, but not limited to, a revised Wetland Plan of the area in question at the scale applicable to the project and a narrative stating the methodology used, the results of the investigation, and supporting documentation for the wetland boundary.*

The Board *and Commission* may also consider evidence from any or all of the following sources:(\*)

- (a) Review of findings by the Soil Conservation Service;
- (b) Public comments, evidence, and testimony from a public hearing, if required;
- (c) Such other evidence as *anyone* may reasonably offer or the Board or Commission may require.

The burden of proof shall be upon the *applicant* making the wetlands designation. Any costs incurred shall be borne by the *applicant* and shall not be a charge upon the Town.

#### **D. Permitted Uses Within the Wetlands Conservation District**

1. *The construction or maintenance of single-family dwellings, garages, and driveways, excluding septic disposal systems, on pre-existing lots of record as of effective date of this ordinance (March 12, 1991), except where the Commission has recommended denial of the related Wetlands Board application under RSA 482-A and the New Hampshire Wetlands Board, Code of Administrative Rules. Where denial has been recommended, a Special Use Permit under Section E.1 may be applied for.*

2. The following uses are permitted which will not require the erection or construction of any structures of buildings, will not alter the natural surface configuration by the addition of fill or dredging, and uses that otherwise are permitted. Such uses may include the following:

(a) Forestry - Tree Farming, using the best management practices *outlined in "Best Management Practices for Erosion Control on Timber Harvesting in New Hampshire" Department of Resource and Economic Development, Division of Forests and Lands*, in order to protect *wetlands and waterbodies* from damage and to prevent sedimentation;

(b) Cultivation and Harvesting of Crops and Grazing, using standards provided by the Soil Conservation Service, including the protection of wetlands from pollution caused by fertilizers, pesticides and herbicides;

(c) Wildlife Refuges, *consistent with the purpose and intent of this ordinance*;

(d) Parks and Recreation Uses, consistent with the purpose and intent of this ordinance;

(e) Conservation Areas and Nature Trails, *consistent with the purpose and intent of this ordinance*;

(f) Open Spaces, as permitted and required by the sub-division regulations;

(g) *Uses incidental to the enjoyment or maintenance of residential property. Such uses shall include maintenance of existing structures and landscaping, but shall not include the removal or deposition of materials from or into a wetland without first being granted a Special Use Permit through this ordinance.*

3. *No person shall conduct or maintain another activity without first obtaining a Special Use Permit as described in Section E.*

## **E. Special (\*) Use Permits**

1 . Special (\*)*Use Permits* may be issued by the Board(\*), after proper public notice and public hearing, for undertaking the following uses in the Wetlands Conservation District when the application has been referred to the (\*) Commission and to the Health Officer for review and comment at least (\*)*thirty (30) days* prior to the hearing.

(a) Streets, roads, and other access ways, utility right-of-way easements, including power lines and pipe lines, if so located and constructed as to minimize any detrimental impact to such uses upon the wetland.

(b) Water impoundments *for the purposes of creating a waterbody for wildlife, on-site detention of surface runoff, fire protection, and/or recreational uses.*

(c) The undertaking of a use not otherwise permitted in the Wetlands Conservation District, if it can be shown that such proposed use is not in conflict with any and all of the purposes and intentions listed in Section A of this ordinance.

2. *The Board shall regulate any operation within or use of a wetland involving removal or deposition of material, or any obstruction, alteration, or pollution, of such wetlands unless such operation or use is permitted pursuant to Section D of this ordinance.*

3. *Any person found to be conducting or maintaining an activity without the prior authorization of the Board, shall be subject to the enforcement proceedings and penalties prescribed in Section J of this ordinance and any other remedies provided by law. See RSA 676:17.*

4. *If granted, the Special Use Permit shall be valid for a period of two (2) years from the date of approval and shall expire if not implemented by that time, unless a different period is specified and approved by the Board in consultation with the Commission.*

5. *The Board shall consider all relevant facts and circumstances in making its decision on an application for a Special Use Permit including but not limited to the following:*

(a) *The environmental impact of the proposed action, including the effects on the wetland's capacity to support fish and wildlife, prevent flooding, supply and protect surface and ground waters, control sediment, control pollution, support recreational activities, and promote public health and safety.*

(b) *The character and degree of injury to, or interferences with safety, health, or the reasonable use of property, including abutting or downstream property, which would be caused or threatened by the proposed activity, or the creation of conditions which may do so. This includes recognition of potential damage from erosion, turbidity, or siltation, loss of fish and wildlife and their habitat, loss of unique habitat having demonstrable natural, scientific, or educational value, loss or diminution of beneficial aquatic organisms and wetland plants, the dangers of flooding and pollution, and the destruction of the economic, aesthetic, recreational, and other public and private uses and values of wetlands to the community.*

## **F. Special Provisions**

1. No private subsurface sewage disposal system, or any part thereof, may be constructed or enlarged within a wetland or closer than (\*)*seventy-five (75) feet to any wetland, as defined by this ordinance, except for the provisions made in Section F.1 a or F.1b.*

(a) *For waterbodies, or wetlands which contain "Type A Hydric soil" as defined by Env-Ws 1014.02 (a) (17), the setback listed above will increase to one hundred twenty-five (125) feet from the limits of the waterbody or "Type A Hydric soil".*

(b) *If the wetland has been found to contain rare, threatened, or endangered species, as defined in the Plant Protection Law RSA 217:A or listed in Res-N 306, or is a bog plant community, the setback shall be 300 feet from the boundary of the wetlands where these conditions exist, unless it can be demonstrated that the proposed development will not have a significant adverse impact.*

(c) *For the purposes of this provision, a delineation of "Type B Hydric soil", as defined by Env-Ws 1014.02 (a) (18), shall be accepted for the wetland boundary,*

2. *Unless otherwise permitted by the Board, no construction activity shall encroach within twenty five (25) feet of the limits of a wetland; all efforts shall be made by the site developer to maintain this buffer in its undisturbed vegetative state.*

3. No part of any wetland may be considered as part of the minimum size requirement of any lot, *with the following exception. A lot existing at the time of the adoption of this ordinance, which was approved by the Board and recorded in the Carroll County Registry of Deeds, and which otherwise meets all provisions of this ordinance, shall be exempt from this subsection.*

## **G. Prior Non-Conforming Uses**

Any lawful use of the land or a building or part thereof at the time of the adoption of this ordinance may be continued, with normal repairs and maintenance permitted, although such use does not conform to the provisions of this ordinance, provided however that:

1. A non-conforming use shall not be changed to another non-conforming use;
2. A non-conforming use shall not be enlarged or expanded;
3. A non-conforming use which has been discontinued for *two (2) years* shall not be resumed;
4. Any non-conforming use destroyed by fire or other natural disaster may be repaired or replaced (\*)*within two (2) years if the degree of non-conformity is not increased.*

## **H. Separability**

If any section, provision, portion, clause, or phrase of this ordinance shall be held to be invalid or unconstitutional by any court or competent authority, such holding shall not affect, impair, or invalidate any other section, provision, portion, clause, or phrase of this ordinance.

## **I. Conflict With Other Regulations**

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

## **J. Administration and Enforcement**

1. *The Board is hereby authorized and empowered to promulgate such rules as are necessary for the efficient administration and enforcement of the ordinance. The Board is hereby authorized to grant waivers, in consultation with the Commission, providing that a finding is made that the Purpose and Intent under Section A has been met.*

2. *Upon any well-founded information that this ordinance is being violated, the Board or Commission or any citizen may report the violation to the Board of Selectmen. Either the Board or Commission may recommend such enforcement actions as may be appropriate and lawful. RSA 676:17. Upon receipt of the information that this ordinance is being violated, the selectmen shall notify the owner or tenant of the property on which the violation is alleged to occur. Where appropriate, the Board or Commission may notify the N.H. Wetlands Board, US Army Corps of Engineers, or such other State or Federal agency as may have jurisdiction, of the violation.*

3. *A civil penalty not to exceed the statutory maximum(\$100) may be imposed for each day that such violation is found by the court to continue after the conviction date or after the date on which the violator receives written notice from the town that he/she is in violation, whichever is earlier.*