

## **SECTION XX: WETLANDS CONSERVATION DISTRICT ORDINANCE**

Adopted March 17, 1979, Amended March 13, 1990; Amended March 9, 1993

### 20.1 General

The Wetlands Conservation District shall be considered as overlaying any other Districts established by this ordinance. Any use permitted in the portions of the Districts so overlaid shall only be permitted subject to all provisions of this Section.

### 20.2 Purposes

The Purpose of this ordinance is:

- 20.2.1 To further the maintenance of safe and healthful conditions of waters within the Town of Jaffrey; to prevent and control water pollution, protect spawning grounds, fish, aquatic life, bird, and other wildlife habitat; control building sites, placement of structures, and land uses; and conserve shore cover and visual as well as actual points of access to wetlands and natural beauty including scenic views. (Amended 2001)
- 20.2.2 To prevent necessary or excessive expenses to the Town's endeavors to provide and maintain essential services and utilities, which expenses might arise because of inharmonious use of wetlands.
- 20.2.3 To encourage those uses that can be appropriately and safely located in wetland areas.

### 20.3 Applicability

The Wetlands Conservation District comprises all ponds, rivers, intermittent and perennial streams, ephemeral ponds, and wetlands; this district includes the upland area within 75 feet of these features.

### 20.4 Permitted Uses

Any of the following uses that do not result in the erection of any primary structure or dwellings or alter the surface configuration by the addition of fill, dredging or excavation, and that are otherwise permitted by the Land Use Ordinance:

- 20.4.1 Forestry in compliance with the New Hampshire State Forestry and Timber Laws (RSA 227-J and Best Management Practices for Timber Harvesting).

- 20.4.2 Agriculture, including grazing, farming, truck gardening, and harvesting of crops; but not including the stockpiling of manure.
- 20.4.3 Water impoundments and well supplies, public and private.
- 20.4.4 Drainage ways: streams, creeks, or other paths of normal runoff water.
- 20.4.5 Wildlife refuge.
- 20.4.6 Parks and such recreation uses as are consistent with the purpose and intentions of paragraph B of this section.
- 20.4.7 Conservation areas and nature trails.
- 20.4.8 Open space, as permitted by subdivision regulations.
- 20.4.9 Accessory Buildings which meet the definition under 20.13 (Amended 2017)

## 20.5 Nonconforming Uses

- 20.5.1 Any lawful use of buildings, structures, premises, land, or parts thereof existing at the effective date of this Section or amendments thereto and not in conformance with the provisions of this section shall be considered to be a nonconforming use.
- 20.5.2 Any nonconforming use may continue and any may be maintained, repaired, and improved. Without a variance from the Board of Adjustment, no such nonconforming use may be:
  - a) Expanded;
  - b) Changed to another nonconforming use; or
  - c) Renewed after it has been discontinued for a period of 12 months or more.

## 20.6 Special Exceptions

The Board of Adjustment, after proper public notice and public hearing, may grant special exceptions for the following uses within the Wetlands Conservation District.

- 20.6.1 Streets, roads, and other access ways and utility rights-of-way easements including power lines and pipe lines if essential to the productive use of land not so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the wetlands.
- 20.6.2 The undertaking of a use not otherwise permitted in the Wetlands Conservation District that may include the erection of an accessory building (see definitions Sec 20.13) or an addition to an accessory structure. Dredging, filling, draining, or otherwise altering the surface configuration of land may also require a permit from the New Hampshire Department of Environmental Services or the Wetlands Board (Amended 2017).

## 20.7 Placement of Buildings

No primary building, impervious cover, or driveway shall be located within the Wetlands Conservation District.

## 20.8 Forest Conservation and Clearing

In order to preserve the natural beauty of the forest, protect the shorelines from erosion and pollution, protect stream temperature and aquatic life, and provide important and necessary wildlife habitat, any cutting of trees within the Wetlands Conservation District shall conform to the provisions of RSA 227-J and RSA 483-B.

## 20.9 Mineral Exploration

Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods that shall create minimal disturbance. A permit from the Planning Board shall be required for mineral exploration that exceeds the limitations above.

## 20.10 Residential Lot Standards

Lots abutting public waters as defined in Section XIII shall conform to the provisions of RSA 483-B. All other lots within the Wetlands Conservation District shall have a minimum shore frontage of 200', as measured at the normal high water level, except noncontiguous wet areas under one acre are not included here for purposes of meeting frontage requirements.

## 20.11 Subsurface Sewage Disposal Setbacks

The placement of underground sewage disposal facilities within 250' of public water as defined in Section XIII shall conform to the provisions of RSA-483B. In all other cases, the minimum setback shall be no less than 100 horizontal feet. Where daily sewage flow exceeds 2,000 gallons, the minimum setback shall be 200 feet.

## 20.12 Water Quality Protection

No activity shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quality, obnoxiousness, toxicity, or temperature that run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil, or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant or aquatic life.

## 20.13 Definitions

Terms not defined herein shall have the customary dictionary meaning. As used in this section, the following definitions shall apply:

**ACCESORY BUILDING** - A subordinate building located on the same lot with the main building and the use of which is customarily incidental to the main building. This building shall be a single-story building with dimensions not exceeding two hundred (200) square feet and may be located as close as thirty (30) feet to the normal high water mark.

**BASAL AREA** - The cross sectional area of a tree measured at a height of four and one

half feet above the ground (usually expressed in square feet per acre for a stand of trees).

**EPHEMERAL PONDS** - Topographic depressions that flood seasonally at a time of high water table.

**INCORRECT DESIGNATION OF SOILS** - In the event that an area is incorrectly designated as having poorly drained or very poorly drained soils on the Town of Jaffrey "Wet Soils and Wetlands Map" and evidence to that effect is satisfactorily presented to the Planning Board, the restrictions contained in this regulation shall not apply. Such evidence may be obtained by adequate onsite soils investigation and analysis conducted by a soils scientist qualified in field analysis.

**INTERMITTENT STREAM** - A drainage channel with running water only during times of high water table or high runoff volume due to snowmelt or rainstorms; typically seasonal flow, as with spring snowmelt.

**NORMAL HIGH WATER MARK** - That line on the shores and banks of nontidal waters that is apparent because of the contiguous, different character of the soil or the vegetation due to the prolonged action of the water. Relative to vegetation, it is that line where the vegetation changes from predominantly aquatic to predominantly terrestrial (*i.e.*, aquatic vegetation includes but is not limited to the following plants and plant groups: water lily, pond lily, pickerelweed, cattail, wild rice, sedges, rushes, and marsh grasses; and terrestrial vegetation includes but is not limited to the following plants and plant groups: upland grasses, aster, lady slipper, wintergreen, partridge berry, pines, cedars oaks, spruce, ashes, alders, elms, and maples). In places where the shore or bank is of such character that the high water cannot be easily determined (*e.g.*, rockslides, ledges, rapidly eroding or slumping banks), the normal high water mark shall be estimated from places where it can be determined from the method above.

**PERENNIAL STREAM** - Any stream channel flowing water year round.

**POND** - Any inland body of water that has a surface area in excess of ten or more acres or where such body of water is made and in addition is completely surrounded by land held by a single owner or those privately owned ponds that are held primarily as waterfowl and fish breeding areas or for hunting and fishing.

**PUBLIC WATERS** - Those water bodies designated by the Department of Environmental Services in the official "List of Public Waters in New Hampshire;" in the Town of Jaffrey, those water bodies consist of: Gilson Pond, Thorndike Pond, Frost Pond, Parker Pond, Cheshire Pond, Black Reservoir, Hodge Pond, Gilmore Pond, Scott Pond, Cummings Pond, and Wildlife Pond.

**RIVER** - Any free-flowing body of water from that point at which it provides drainage for a watershed of twenty-five square miles to its mouth.

**WETLAND** - Wetlands mean 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. (Amended March 8, 2005)

## 20.14 Emergency Operations

Emergency operations shall include operations conducted for the public health, safety, or general welfare (e.g., protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury).

#### 20.15 Enforcement

The Board of Selectmen is hereby authorized and empowered to adopt such rules of organization and procedures as are necessary for the efficient administration and enforcement of this ordinance.

Upon any well founded information that this ordinance is being violated, the Selectmen shall, on their own initiative, take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other appropriate legal action.

#### 20.16 Amendment

Regulations embodied in the Wetlands Conservation District may be amended by a majority vote at any legal Town Meeting, when such amendment is published in the Warrant calling for the meeting and when such amendment has received two public hearings, which hearings have been advertised and given legal fifteen (15) days' notices.

#### 20.17 Penalties

Infraction of any provision hereof is a misdemeanor, punishable by a fine of not more than One Hundred Dollars (\$100.00). Each day of infraction constitutes a separate offense.