

## **Article 202: WETLANDS CONSERVATION DISTRICT**

(Adopted March 9, 1982, Amended March 11, 2008)

**202.1 PURPOSE:** In the interest of public health, convenience, safety and welfare, this ordinance is intended to guide the use of wetlands and wetland buffers, as defined in Article 202.2 of this ordinance.

- A.** To insure uses that can be safely and appropriately located in wetlands and wetland buffers that will maintain the quality and quantity of groundwater, water re-charge areas and surface waters necessary to supply existing and future water supply needs.
- B.** To control development of structures and land use in wetlands and wetland buffers, which would contribute to pollution or depletion of surface and/or groundwater.
- C.** To encourage environmental diversity by protecting and maintaining existing wetland systems and the vegetation and wildlife supported by such systems. This shall include the maintenance of wetland areas as sources of nutrients for fin fish, crustacea, shellfish and wildlife, and as habitats and reproduction areas for plants, fish and wildlife as identified within the wetlands functional and value assessment required in 202.2B.
- D.** To protect persons and property against the hazards of floodwater inundation by insuring uses of wetlands and wetland buffers that will not significantly reduce the natural ability of wetlands to absorb floodwaters and silt leading to a disruption in the natural flow pattern of streams and other watercourses within the Town.
- E.** To encourage uses that will enhance rather than depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public within wetlands and wetland buffers.

**202.2 DEFINITION:** The Wetlands Conservation District of Kingston includes those areas of Town defined in the following manner:

- A.** An area shall be considered a wetland if it 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, marshes, bogs, lakes, ponds, rivers, streams and vernal pools. Wetlands shall be delineated on the

basis of hydrophytic vegetation, hydric soils, and wetlands hydrology in accordance with the techniques outlined in the U.S. Army Corps of Engineers Wetlands Delineation Manual Technical Report Y-87-1. (January, 1987) or as subsequently adopted by the State of N.H.

- B.** An area shall be considered a wetland buffer if it is an upland area immediately adjacent to wetlands as defined in this ordinance. The linear extent of the wetland buffer shall be determined by Table A on the basis of the functional values for the subject wetlands as determined by a certified wetlands scientist.

<b>Wetland Buffer Width Determination Table (Article 202, Table A)</b>															
<b>Points</b>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
<b>Buffer Width (ft)</b>	25	35	40	45	50	55	60	65	70	75	80	85	90	95	100
	<b>Function/Value</b>					<b>Points</b>									
	FA					1									
	GW, NR, PE, SR					2									
	SS, WH, FH					3									
	ESH, VP					Maximum Buffer									
<b>KEY</b>															
FA =	Floodflow Alteration														
GW =	Groundwater Recharge/Discharge														
NR =	Nutrient Removal														
PE =	Product Export														
SR =	Sediment/Toxicant Retention														
SS =	Shoreline/Sediment Stabilization														
WH =	Wildlife Habitat														
FH =	Fish/Shellfish Habitat														
ESH =	Endangered Species Habitat														
VP =	Vernal Pool														

- C.** Where the Wetlands Conservation District is superimposed over another zoning district in the Town of Kingston, that district which is more restrictive shall govern.

**202.3 WETLANDS CONSERVATION DISTRICT MAP:** The Wetlands Conservation District as herein defined is shown on a map designated as “Town of Kingston Wetlands Conservation District” and is a

supplement to the zoning map of the Town. Wetlands boundaries indicated on the zoning map supplement shall be verified by an on-site wetland delineation by a certified wetland scientist as referenced in Article 202.2. The results of any on-site wetland delineation will be on file with the Planning Board and Conservation Commission. A certified wetland scientist is a person qualified in wetland classification and mapping who is certified by the State of New Hampshire Joint Board of Natural Scientists.

**202.4 APPEAL:** In the event that an area is alleged to be incorrectly delineated on the wetland map, any person aggrieved by such a designation may present adequate evidence of such to the Planning Board. Adequate evidence shall include a written report of on-site wetland investigation and analysis conducted by a certified wetland scientist.

**202.5 PERMITTED USES: :**

**A.** In designated wetland areas permitted uses are those which are compatible with the purposes specified in Section 202.1, Purpose, of this ordinance and do not involve significant alteration of the wetland. Permitted uses are:

1. Forestry, agriculture and tree farming provided that such use is shown not to 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;
2. Water impoundments and supply wells;
3. Maintenance of existing drainage ways: streams, creeks, or other water paths of normal water runoff;
4. Wildlife refuge;
5. Parks and such recreational;
6. Conservation areas and nature trails; and
7. Open Space as permitted by subdivision regulations and other sections of this ordinance.

**B.** In designated buffer areas permitted uses are those which are compatible with the purposes specified in Section 202.1, Purpose, of this ordinance and do not involve significant alteration of the buffer. Buffer provisions are:

1. All forestry and agriculture activities within the wetland buffer shall be undertaken with special care to avoid erosion and siltation into wetlands.
2. The construction or placement of any structure, addition,

- improvement or swimming pool is prohibited.
3. Where an existing building within the wetland buffer is destroyed or is in need of extensive repair, it may be rebuilt provided that such re-building is completed within two years of the event causing destruction. The new or rebuilt structure shall not extend further into the wetland buffer than the original footprint.
  4. The storage of any motor vehicle, including but not limited to autos and trucks, snowmobiles, recreational vehicles, motorcycles or motorized boats is prohibited.
  5. The dumping or placing of trash, waste, unsightly or offensive material, other than non-commercial composting under control by the homeowner is prohibited.
  6. Only environmentally friendly fertilizers shall be used in the buffer. For this section, environmentally friendly fertilizers means organic. Pesticide and herbicide use are not allowed in the buffer.
  7. Landscaping of the buffer shall be limited to native plant species.

## **202.6 USES PERMITTED SUBJECT TO REVIEW:**

**A. Easements and Rights of Way:** Streets, roads and other access ways and utility rights-of-way or easements may be permitted provided that evidence of the following be accepted by the appropriate Board:

1. The street, road, access way or utility right-of-way or easements are essential to the productive use of land not zoned under the provisions of this ordinance.
2. The street, road, access way or utility right-of-way or easement is so located and constructed as to minimize any detrimental impact of such uses upon the wetland or designated buffer.
3. Such location and construction be compatible with the intents and purposes of this ordinance.

**B. Underlying Districts:** In cases where the Wetlands Conservation District overlays another zoning district, the proposed use shall be permitted (providing said use is allowed in the underlying district) subject to review by the appropriate Board providing that:

1. Uses are consistent with the purpose and intent in Article 202.1.
2. The appropriate procedure for review as delineated in

Article 202.7 be followed.

## **202.7 PROCEDURE FOR REVIEW**

- A. Building Permits for Individual Lots** Upon receiving a request for a building permit within the Wetlands Conservation District, the Building Inspector, as agent of the Board of Selectmen shall notify the Conservation Commission of said request. The Conservation Commission may submit a written report following its review of the request. If the Building Inspector determines that the proposed activity may have a significant negative impact on the wetlands and/or designated buffer as described in Article 202.1, they may recommend that the Selectmen deny the application.
- B. Subdivision and Site Plan Review** Any person who desires to subdivide land or propose construction that would be subject to Site Plan Review within the Wetlands Conservation District shall submit to the Planning Board, in addition to all other requirements stipulated in the Subdivision Regulations, five (5) copies (copies are given to the Board of Selectmen, Conservation Commission, Town Engineer, and two retained by the Planning Board) of a report prepared by a Certified Wetland Scientist describing whether the impact on the wetlands and/or designated buffer is significant. The Board of Selectmen and Conservation Commission may also submit a written report for consideration.
- C. Issuance of Conditions** If after review of all submitted data the appropriate Board determines that the area on which the proposed work is to be done is in conflict with Article 202.1 of this ordinance, the Board shall:
1. Grant preliminary approval subject to an order of conditions it deems necessary for compliance and subsequent final approval, or;
  2. Deny the request and give the reason thereto.
- D. Designated Buffer** The appropriate Board shall be entitled to review, regulate and prohibit development proposals within one hundred (100) feet of a wetland when it is determined that such development may have a significant negative impact on the wetland and is not consistent with the purposes and intent of Article 202.1.

## **202.8 CONDITIONAL USE PERMITS**

Conditional use permits are required for any work proposed within the

wetland conservation district or designated buffer, unless it meets the provisions of Articles 202.5 and 202.6. In granting a Conditional Use Permit, the Planning Board shall seek the opinion of the Conservation Commission and may impose conditions, to the extent the Board concludes such conditions are necessary, to minimize any adverse effect of the proposed project on the wetlands and/or the designated wetland buffer.

**A.** Procedure on application:

1. A conditional use permit application shall be included in submittals under Article 202.7.
2. The Planning Board shall act upon the Conditional Use Permit application in accordance with the procedural requirements of RSA 676:3.

**B.** A Conditional Use Permit may be granted by the Planning Board (RSA 674:21 II) for construction, in areas designated as wetlands as well as in areas designated as buffer areas to wetlands provided that all of the following conditions are found to exist:

1. The proposed construction is essential to the productive use of land not within the Wetlands Conservation District.
2. Design and construction and maintenance methods will be such as to minimize detrimental impact upon the wetland and will include restoration of the site as nearly as possible to its original grade and condition.
3. No alternative route which does not cross a wetland or has less detrimental impact on the wetland is feasible.

**202.9 DENIAL AND APPEAL:** In such cases as the Planning Board may deny a Conditional Use application under this section, it shall supply the applicant with a letter citing the reasons for such denial.

**202.10 EXEMPTIONS:** Fire ponds and intake areas of dry hydrants that have been legally constructed to provide water for municipal firefighting purposes as approved by a local fire chief, may be cleaned out when necessary to preserve their usefulness without a conditional use permit. Such fire ponds, intake areas of any hydrants may be cleaned out by hand or machine; provided, that the facility is neither enlarged nor extended into any area of wetlands or designated buffer and is completed in accordance with the provisions of RSA CH. 482-A:3 IV(b).

**202.11. OTHER PROVISIONS:** Any wetlands altered in violation of this Ordinance shall be restored at the expense of the violator(s) as provided by RSA 483-A:5. Any designated buffer altered in violation of this

Title I: Ordinances

Section 200 – Zoning Districts Overlays

Article 202 – Wetlands Conservation District

Ordinance shall be restored at the expense of the violator(s).