

The Newington Planning Board voted on November 24, 2003 to replace Article X of the Zoning Ordinance with the following, and to recommend approval by Town Meeting in March 2004:

Article X – Wetlands Conservation District

Section 1 - Purpose and Intent

The purpose of this article is to protect the public health, safety and general welfare; as well as, the wetland's ecological integrity and function by controlling and guiding the use of land areas which have been found to be wetlands. It is intended that this article shall:

- A. 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;
- B. Prevent destruction of, or significant changes to 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;
- C. Protect wildlife habitats, maintain ecological balances and enhance ecological values such as those cited in RSA 483-A:1-b;
- D. Protect potential water supplies and existing aquifers (water bearing stratum) and aquifer recharge areas;
- E. 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;
- F. Prevent damage to structures and properties caused by inappropriate development of wetlands.

Section 2 - Wetlands Defined

“Wetland” is 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, streams, ponds, vernal pools, marshes, bogs, tidal wetlands and similar areas. Man-made detention basins and treatment swales are not to be construed as wetlands.

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

“Vernal Pools” are defined as a temporary body of water providing essential breeding habitat for certain amphibians and invertebrates and that do not support fish. For reference, see *Identification and Documentation of Vernal Pools in New Hampshire, 1997*.

Delineation Requirements: The precise location of a wetland boundary in any particular case must be determined by on-site inspection 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) and *Field Indicators for Identifying Hydric Soils in New England* (Version 2, July 1998) published by the New England Interstate Water Pollution Control Commission.

Section 3 - District Boundaries

The requirements of this article are applicable to the entire Town of Newington and include all jurisdictional wetlands as defined in Section 2 above; as well as, all prime wetlands shown on the most recent edition of the Town of Newington's Prime Wetland Map.

Section 4 - Permitted & Prohibited Land Uses in Wetlands

A – Prohibited uses include any use that alters the surface configuration of the land by the addition of fill or by dredging, except if expressly permitted in Section B below.

B – Permitted uses are as follows:

1. Agriculture, including grazing, crop production and the construction of fences, using *Best Management Wetlands Practices for Agriculture* (July 1993 - Amended September 1998) 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.
2. Forestry and tree farming using *Best Management Practices Erosion Control on Timber Harvesting Operations in New Hampshire* (April 1996). This permitted use includes the construction of an access road for said purpose.
3. Wildlife habitat enhancement and management.
4. Passive recreational uses consistent with the purpose and intent of this article as defined in Section one above.
5. Conservation areas and nature trails using *Best Management Practices for Erosion Control During Trail Maintenance and Construction* (1994 updated 1996).
6. Driveways for access to residential buildable upland lots, with proper drainage and erosion control measures.

7. Residential uses by Special Exception as provided for in Section 4C below.
8. The construction of footbridges, catwalks and wharves, provided that:
 - a) said structures are constructed on posts or pilings so as to permit unobstructed flow of water;
 - b) the natural contour of the wetland is preserved; and
 - c) the Planning Board has approved the proposed construction of the footbridges, catwalks & wharves.

C - Special Exceptions: The construction of roads, access ways, water impoundment & water supply systems, pipelines, power lines and other transmission lines in wetlands areas shall require a Special Exception from the Board of Adjustment (BOA). The Special Exception shall be granted by the BOA, after considering the Conservation Commission's recommendations, and only upon finding all of the following:

1. The proposed construction is essential to the productive use of non-wetland areas.
2. Design, construction and maintenance methods will minimize any detrimental impact upon the wetlands, and will include restoration of the site as nearly as possible to its original grade and condition.
3. No alternative route is feasible and reasonable.
4. Issuance of permits (if applicable) from the New Hampshire Wetlands Bureau and the Army Corps of Engineers. A copy of these permits shall be submitted to the Town in advance.
5. All Special Exception criteria specified in Article IV Section 9 of this ordinance, and
6. The provision of mitigation measures, in Newington, close to the affected wetland system, where appropriate.

Section 5 – Minimum Lot Size Requirements

Areas designated as jurisdictional wetlands may be used to fulfill no more than 50% of the minimum lot size required by the Zoning Ordinance, provided that the upland area is at least 30,000 contiguous square feet.

Section 6 – Wetland Buffer Provisions

The following vegetative buffers shall be observed in order to protect the integrity and functionality of the wetlands resources referenced below (Reference *Buffers for Wetland & Surface Waters: A Guidebook for New Hampshire Municipalities*, revised May 1997).

Resource	Size of Resource	Type of Buffer	Size of Buffer
All Wetlands	Greater than 5,000 square feet	No-Cut and No-Disturbance	25 Feet
Vernal Pools	All sizes	No-Cut and No-Disturbance	25 Feet
Tidal & Prime Wetlands	All sizes	Limited-Cut*	75 Feet

*“Limited-Cut” buffer cited above means a healthy, well-distributed stand of trees, saplings, shrubs and ground cover that must be maintained and which leaves an intact vegetated buffer. Tree-cutting shall be limited to 50% of the basal area of trees, and 50% of the total number of saplings over a 20-year period. Reference - New Hampshire’s Comprehensive Shoreland Protection Act (RSA 483-B).

Section 7 – Structural Setbacks

The following setbacks to wetlands shall be observed by all structures in order to protect the integrity and functionality of the wetlands resources referenced below.

Resource	Size of Resource	Relationship to Surface Waters	Minimum Setback
All Wetlands	All Sizes	Contiguous with Surface Waters	100 Feet**
All Wetlands except Prime Wetlands & Vernal Pools	Greater than 5,000 square feet	Not Contiguous with Surface Waters	50 Feet
All Wetlands except Prime Wetlands & Vernal Pools	5,000 square feet or less	-	0 Feet
Vernal Pools	All sizes	-	50 Feet

**Parking lots are exempt from this 100-foot requirement from all wetlands except Prime Wetlands. Parking lots shall observe a 25 foot setback from the (non-Prime) Wetlands that are greater than 5,000 sf.

Section 8 – Exemptions

Undeveloped building lots of 3 acres or less that were created prior to 2003 shall be exempt from the pond & stream buffer and pond & stream setback requirements in this article.

Section 9 – Violations

Any wetland (including prime wetlands and vernal pools) or its 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 and said restoration shall be subject to review by the Newington 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.