

ARTICLE XVIII
Wetlands Protection Ordinance
(Amended 2012)

18.1 PURPOSE

- (1) To maintain, and where possible improve, the quality of surface waters and ground water preserving the ability of wetlands to filter pollution, trap sediment, retain and absorb chemicals and nutrients, and produce oxygen.
- (2) To prevent the destruction of, or significant changes to, wetlands, related water bodies and adjoining land which provide flood protection, and to protect persons and property against the hazards of flood inundation by assuring the continuation of the natural or existing flow patterns of streams and other water courses and water bodies within the Town of Greenland.
- (3) To preserve, protect, and where possible improve, potential water supplies and aquifers and aquifer recharge areas.
- (4) To preserve, protect, and where possible improve, wildlife habitats and maintain ecological balance.
- (5) To preserve, protect, and where possible improve, unique or unusual natural areas and rare and endangered plant and animal species.
- (6) To preserve, protect, and where possible improve, shellfish and fisheries.
- (7) To prevent the expenditure of municipal funds for the purpose of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands.
- (8) To require the use of best management practices and low impact development in and adjacent to wetland areas.
- (9) Prevent damage to structures and properties caused by inappropriate development in and adjacent to wetlands.
- (10) To provide a single and consistent approach for identifying and delineating wetlands based on the most advanced professional standards and scientific analysis.
- (11) To reduce the potential of impacts from non-point source pollution.

18.2 Jurisdictional Wetland Areas

Greenland's Jurisdictional Wetlands are defined as identified in the "Corps of Engineers Wetland Delineation Manual, Technical Report Y-87-1", January 1987 as amended including, but are not limited to, swamps, bogs, marshes, ponds, and rivers. The following are specifically included as part of Greenland's Jurisdictional Wetland Areas:

- 18.2.1 **Tidal Wetland:** Is a Jurisdictional Wetland Area whose vegetation, hydrology and soils are influenced by regular and periodic inundation of tidal waters. These include, but are not limited to, salt marshes, tidal flats and tidal creeks.
- 18.2.2 **Inland Jurisdictional Wetland Areas:** Are freshwater Jurisdictional Wetland Areas as defined above that are not considered to be tidal wetlands.
- 18.2.3 Man-made non-tidal drainage ditches, culverts, catch basins, and ponds that have been legally constructed to collect or convey storm water and spring run-off, 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, and man-made water conveyance systems that are used for the commercial or industrial purpose of collecting, conveying, storing, and recycling water shall not be considered part of the Jurisdictional Wetland Area.

18.3 Identification and Delineation Requirements of Wetlands

Wetlands and wetland boundaries shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology in accordance with the techniques outlined in the “Corps of Engineers Wetland Delineation Manual, Technical Report Y-87-1”, January 1987 as amended. Wetlands shall be delineated by on-site inspection of soil types, vegetation, and hydrology by a NH certified wetland scientist. A certified NH wetland scientist shall mean a person who is qualified in wetland delineation and who is certified by the State of New Hampshire Joint Board of Licensure.

18.4 APPEAL OF WETLANDS BOUNDARIES

In the event that a Jurisdictional Wetland Area and or associated boundary is in dispute between an applicant and a Greenland Local Land Use Board as defined by NH RSA 672:7, the Local Land Use Board may call upon the services of an independent NH certified wetlands scientist to examine said area and report findings to the Local Land Use Board for their determination of the boundary. The costs to the Town of such dispute shall be borne by the applicant.

18.5 PERMITTED USES IN THE JURISDICTIONAL WETLAND AREA

The following uses, to the extent permitted in the underlying zoning district, shall be permitted in Jurisdictional Wetlands Areas, associated wetland buffers and setbacks as specified, provided that the proposed use will not cause a degradation of the jurisdictional wetland area, violate state or federal laws and will utilize State and Federal Best Management Practices (BMP's).

- A. Agriculture, including grazing, hay production, truck gardening and silage production provided that such use is shown not to cause significant increases in surface or groundwater contamination by pesticides or other toxic or hazardous substance and that such use will not cause or contribute to soil erosion;
- B. Forestry and tree farming;
- C. Wildlife habitat development and management;
- D. Recreational uses consistent with the purpose and intent of this article;
- E. Conservation area and nature trails;
- F. The erection of fences (no greater than 6' tall), footbridges, catwalks and wharves provided such structures are built on posts or pilings and permit the unobstructed flow of the water or tide and preserve the natural contours of the wetland;
- G. Non-invasive plantings;
- H. Removal of invasive plant species.

18.6 Conditional Uses

18.6.1 Conditional Use Permit: Under the enabling authority granted by NH RSA 674:21 II, the following uses are only permitted in Jurisdictional Wetland Areas, Wetland Buffers and Wetland Setbacks pursuant to the issuance of a conditional use permit by the Planning Board provided that all of the conditions listed in article 18.6.2 below are met.

- A. Construction of roads and other access ways/driveways, utilities, drainage systems (shall not include septic systems or parts thereof), and water impoundments for onsite water supplies that impact Jurisdictional Wetland Areas, Buffer and Wetland Setback, provided that the proposed construction is essential to the productive use of land not within the Jurisdictional Wetland Area, Buffer or Setback.

18.6.2 Conditions:

- A. That the proposed use is permitted in the underlying zoning district;
- B. That the use for which the permit is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Jurisdictional Wetland Area, buffer or setback;

- C. That the design, construction and maintenance of the proposed use will, to the extent feasible, minimize detrimental impact on the Jurisdictional Wetland Area, buffer or setback and that no alternative design which does not impact a Jurisdictional Wetland Area, buffer or setback or which has less detrimental impact on the Jurisdictional Wetland Area, buffer or setback is feasible;
- D. In cases where the proposed use is temporary or where construction activity disturbs areas adjacent to the immediate use, that the landowner agrees to restore the site as nearly as possible to its original grade, surface condition, and vegetative condition following construction;
- E. That the proposed use will not create a hazard to individual or public health, safety and welfare due to the loss of the Jurisdictional Wetland Area, contamination of the Jurisdictional Wetland Area and/or groundwater, or other reasons;
- F. There will be no adverse impact on the Jurisdictional Wetland Areas functional values of the site or surrounding properties as it relates to water quality, flood storage capacity and wildlife habitat;
- G. That all required permits shall be obtained from the New Hampshire Department of Environmental Services Water Supply and Pollution Control Division under NH RSA §485-A: 17, the New Hampshire Wetlands Board under NH RSA §483-A, and the United States Army Corps of Engineers under Section 404 of the Clean Water Act;
- H. The applicant develop a stormwater management plan meeting the requirements of the Town's Stormwater Management regulations to document that no adverse impacts will occur unless this requirement is waived by the Planning Board for good cause shown;
- I. That the impact is not contrary to the public interest (an example might be the construction of utility services and that no reasonable alternative exists);
- J. That economic considerations alone are not sufficient reasons for granting a permit.

18.7 PROHIBITED USES and Structural Setbacks to Jurisdictional Wetland Areas

18.7.1 The following specific uses are prohibited within Jurisdictional Wetland Areas and shall be setback 75' from all Jurisdictional Wetland Areas.

- A. Septic systems, or on site disposal systems;
- B. Road salt storage or stockpiles;

- C. Automobile junkyards;
- D. Solid or hazardous waste storage and or facilities;
- E. Regulated substances as defined in NH Administrative Rule-WQ 401;
- F. Bulk storage of gasoline and fuel oil other than for use of heating a residential structure;
- G. Automotive repair and fueling stations;
- H. Storage of pesticides, fertilizers, hazardous agricultural and other materials;
- I. Snow storage, unless it can be demonstrated that the use of the property for snow storage purposes will have no adverse impact on water quality or the quality of the wetlands.

18.7.2 Structure Setback Requirements

The following setbacks to Jurisdictional Wetland Areas shall be observed in order to protect the integrity and function of the Jurisdictional Wetland Area resources below.

Jurisdictional Wetland Area	Size, Relationship to Surface Waters and Perennial Streams	Minimum Structural Setback Requirement
Tidal Wetlands	-	100'
Inland Jurisdictional Wetland Areas	-	50'
Inland Jurisdictional Wetland Areas	<u>Contiguous</u> with surface waters	75'

18.9 Wetland Buffers

18.9.1 The purpose of a wetland buffer is to reduce erosion and sedimentation into the adjacent wetland, or water body, to aid in the control of point and non-point source pollution, to provide a vegetative cover for filtration of runoff, to protect wildlife habitat, and to help preserve ecological balance.

18.9.2 The required wetland buffers, including vegetated buffer strips and limited cut areas, shall be parallel to and measured from the defined Jurisdictional Wetland Area boundary as defined in this ordinance. The following vegetative buffer requirements and limited cut areas shall be observed in order to protect the functionality of the wetlands resources as referenced in the table below:

Jurisdictional Wetland Area	Vegetated Buffer Strip	Limited-Cut Buffer Area
Tidal Wetlands	25'	25'-100'
Inland Jurisdictional Wetland Areas	25'	25'-50'
Inland Jurisdictional Wetland Areas <u>Contiguous</u> with Surface Waters	25'	25'-75'

“Limited-Cut” buffers cited above refers to 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 greater than 6” diameter at breast height (dbh), and 50% of the total number of saplings.

18.9.3 Making Buffer Zones Known: Vegetated Buffer Strip boundaries and limited cut areas shall be printed on all development and construction plans and be delineated on site prior to any construction activity.

18.9.4 Enforcement: Violators may be served with civil fines and required, at their own expense, to regenerate the section of the buffer encroached upon by instructions of the Board of Selectmen and/or New Hampshire Department of Environmental Services.

18.10 CONDITIONAL USE PERMIT FOR OVERBURDENED GROUND WATER PUMPING

18.10.1 A conditional use permit will only be granted by the Planning Board for overburden groundwater pumping at a rate in excess of 20,000 gallons per day, if such pumping is conducted in such manner as to assure no net loss of wetlands within the adjacent area of Jurisdictional Wetland.

18.11 SPECIAL EXCEPTIONS GRANTED BY THE ZONING BOARD OF ADJUSTMENT

18.11.1 Upon application to the Board of Adjustment, a special exception may be granted to permit the erection of a new structure on vacant approved building lots of record or the expansion of an existing structure located within the Jurisdictional Wetland Area, buffer zones, or setbacks provided that all of the following conditions are found to exist:

- A. The lot upon which an exception is sought was an official lot of record, as recorded in the Rockingham County Registry of Deeds prior to March 12, 2002; (Amended 2005)
- B. The new structure or expansion is not otherwise prohibited under the zoning ordinance;

- C. The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Jurisdictional Wetland Area, wetland buffer, or wetland setback;
- D. Due to the provisions of the Wetlands Protection Ordinance, no reasonable and economically viable use of the lot can be made without the exception;
- E. That for disturbances greater than 3,000 square feet, an erosion control/stormwater management plan with drainage computations meeting the requirements of the Greenland Stormwater Management Regulations be submitted; and
- F. That the design and construction of the proposed use will, to the (*maximum*) extent practicable, be undertaken in such a manner as to be consistent with the purposes and spirit of this ordinance.

18.12 OTHER PERMITS

Nothing in the above ordinance shall preclude the need to obtain any other necessary local, state or federal government permits.

New Definitions (will be added to Definition section of the Ordinance):

Driveway: A private access way, the use of which is limited to persons residing, employed, or otherwise using or visiting the parcel in which it is located. A driveway shall not be considered a “Parking Lot.”

Surface Waters: Perennial streams, lakes, ponds, and tidal waters within the jurisdiction of the town, including all streams, lakes, or ponds bordering on the town, marshes, and other natural bodies of water.

Vegetated Buffer Strip: An area retained in its natural state (undisturbed, no cut) or replanted native non-invasive vegetation along the banks of watercourses, water bodies or wetlands, for the purpose of preventing erosion, trapping the sediment in overland runoff, and allowing for periodic flooding without damage to structures. (See also: **Wetland Buffer**)

Wetland: Pursuant to RSA 482-A:2.X, 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. They include, but are not limited to, swamps, bogs, marshes, ponds, lakes, rivers, perennial streams, and all similar areas.

Wetland Buffer: An upland area, adjacent to a wetland or water body, which is subject to special regulations and reviews in order to protect the adjacent wetland or water body value and function. (See also: **Vegetated Buffer Strip**)