

- 13. DEVELOPABLE LAND** - The area of the entire tract to be developed less that classified as Jurisdictional Wetlands or having slopes exceeding 25% in the Strafford County Soils Survey (March 1973), as amended and as further delineated by Qualified Professionals after on-site inspection.
- 14. IMPERVIOUS SURFACES** - Modified surfaces that cannot effectively absorb or infiltrate water. Impervious surfaces include, but are not limited to: roofs, decks, paths, patios, paved, gravel, dirt, or crushed stone driveway, and parking areas. Because impervious surfaces have the tendency to concentrate stormwater flows to waterbodies, when a project proposal exceeds certain impervious area thresholds, installing stormwater management systems is required.
- 15. WETLAND SETBACK**– All of that landward land area defined by the minimum required horizontal setback distance of 25-ft. feet from a delineated wetland buffer, and a line parallel thereto. Includes but is not limited to those shrubs, trees and/or ground covers planted to create, replace, ~~or~~ augment, or enhance any or all of those qualities of any ~~naturally vegetated buffer~~ "Wetland Buffer" as used and defined by this ordinance.
- 16. WETLAND BUFFER** – A designated area of undisturbed land with a width of 25-ft. (unless significant wetlands where said width shall be 50-ft.) that is contiguous or adjacent to a wetland that is required for the continued maintenance, function, and ecological stability of the wetland

17. ORDINARY HIGH WATER MARK -

Per 33 CFR 328.3(e), the **Ordinary high water mark (OHWM)** means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Where the ordinary high-water mark is not easily discernible, the ordinary high-water mark may be determined by the Department of Environmental Services (NH DES) or other qualified independent agents. Reference line shall mean for natural freshwater bodies without artificial impoundments, the natural mean high-water level as determined by the Division of Water Resources of the Department of Environmental Services.

- 18. SETBACK** - Setbacks form boundaries by establishing an exact distance from a fixed point, such as a property line or an adjacent structure, within which building is prohibited. In land use, a setback is the minimum distance which a building or other structure must be set back from a property line, street or road, a river or other stream, a shore or flood plain, or any other place which is deemed to need protection. Depending on the jurisdiction, other things such as retaining walls, septic tanks, and various potential hazards or nuisances might be regulated and prohibited by setback lines.

- 19. UPLAND SOILS** -Soils not present in any wetland area and are soils which are not designated as poorly drained, very poorly drained, alluvial, or flood plain by the National Cooperative Soils Survey,

as may be amended, of the Natural Resources Conservation Service of the United States Department of Agriculture and/or the inland wetlands agency of the municipality in which the project will take place. Upland Soils generally have moderate to steep slopes and require conservation practices.

20. WETLANDS - A wetland is hereby determined to be an area which would be delineated as a wetland using the methodology required by the state of New Hampshire Wetlands Bureau. The Department of Environmental Service Wetlands Bureau requires wetlands to be delineated using a combination of the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, Environmental Laboratory, Department of the Army, 1987 and the Field Indicators for Identifying Hydric Soils in New England, Latest Change, New England Interstate Water Pollution Control Commission, 1998. The approved wetlands delineation methodology uses three parameters, hydric soils, hydrophytic vegetation, and wetland hydrology. The precise location of a wetland boundary in any particular case shall be determined by on-site inspection of soil types and vegetation by a certified wetland scientist using the methodology required by the New Hampshire Department of Environmental Service Wetlands Bureau. In conformance with State RSA 482-A:2,X - Wetlands' means 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 solid conditions.

21. WETLANDS CONSERVATION OVERLAY DISTRICT - Consists of jurisdictional wetlands and wetland buffers and wetland setbacks.

**ARTICLE XIII
WETLAND CONSERVATION ORDINANCE**

(Adopted 3/09/2005)

These Regulations are intended to:

1. Control and regulate the development of structures and of land use on jurisdictionally occurring wetlands and wetland buffers which could contribute, if uncontrolled, to pollution of surface

and ground water by wastewater or septic systems or toxic substances.

2. Prevent unnecessary or excessive expense to the Town in providing and maintaining essential services and utilities as a result of inharmonious use in or near wetlands.
3. Prevent the destruction of natural wetlands which provide flood protection and water storage, provide recharge of groundwater supply, and provide augmentation of stream flow during dry periods.
4. Encourage those uses that can be appropriately and safely located in or adjacent to wetland areas.
5. Protect presently existing natural wetland wildlife habitats and adjacent buffers.
6. Prevent damage to abutters' structures and properties.

A. Description.

1. A Wetland (also see "wetlands" and "wetland buffers and setbacks" definitions in Article II of the Milton Zoning Ordinance) is hereby determined to be an area which would be delineated as a wetland using the methodology required by the State of New Hampshire Department of Environmental Service Wetlands Bureau, surface waters, and including the Wetland buffer and setback requirements of section D of this Ordinance. The Department of Environmental Service Wetlands Bureau requires wetlands to be delineated using a combination of the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, Environmental Laboratory, Department of the Army, 1987 and the Field Indicators for Identifying Hydric Soils in New England, Latest Version. Hydric Soil Technical Committee As of the writing of this Ordinance the approved wetlands delineation methodology uses three parameters or factors, hydric soils, hydrophytic vegetation, and wetland hydrology. The precise location of a wetland boundary in any particular case shall be determined by on-site inspection of soil types and vegetation by a certified wetland scientist using the methodology required by the New Hampshire Department of Environmental Service Wetlands Bureau.
2. In all cases where the rules of this Ordinance differ from those of the underlying zoning district in the Town of Milton, any conflict between such Regulations shall be resolved by applying the more-restrictive Regulation.
3. Areas to be excluded from this Ordinance are:

a.

- a. Where the wetland or surface water is an “isolated wetland” smaller than 3,000 sq. ft.

Note: An **Isolated wetland** means those wetlands and their buffers that are outside of the following critical areas and their buffers, where applicable: 100-year floodplain, lake, river, stream, or wetland. Isolated Wetlands are not hydrologically connected to other surface water features, either by aboveground flows or shallow subsurface water features. These geographically isolated wetlands are surrounded by dry land.

- b. The wetland or surface water is a “vegetated swale” or roadside ditch, a sedimentation/detention basin, an agricultural/irrigation pond, a septage lagoon, or a wetland on converted cropland.

Note: A vegetated swale is a shallow channel that slows runoff and directs it to an area where it can infiltrate. Swales use plants to stabilize the soil, reduce erosion, slow the flow and absorb runoff.

Note: A Detention Basin is an impoundment designed to temporarily store runoff and release it at a controlled rate, reducing the intensity of peak flows during storm events.

- B. Purpose** - 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 high water tables for extended periods of time.

Wetlands are a critical natural resource, which affect water quality, flooding, wildlife, recreation, and aesthetics, and their protection is a goal of the Master Plan. Wetlands protect surface water quality by reducing the velocity of surface water runoff, allowing for the deposit of sediment and nutrients.

Wetlands protect shorelines from erosion. Wetlands absorb water during times of flooding, thus helping to reduce floodwater elevations. Wetlands help to maintain the quality of groundwater recharge. Wetlands provide habitat for a wide variety of wildlife, including fish, birds, deer and other animals. Wetlands contribute to a broad range of recreational opportunities, including canoeing, hunting, fishing and bird watching.

Wetlands contribute to the aesthetic values of the Town, providing open space, natural vistas, landform contrasts, and early autumn foliage.

These purposes, in combination with the fact that wetlands are often ill suited to development activities, demonstrate why the long-term protection of wetlands

The publication *Buffers for Wetlands and Surface Waters*, Chase, Deming and Latawiec, Revised. May 1997 recommends that buffers around wetlands also be protected since unbuffered wetlands may not be able to adequately fulfill their functions. The guidebook defines buffers as “a naturally vegetated upland area adjacent to a wetland or surface water.” In this definition, “naturally vegetated” includes the following: uncut or undisturbed forest, minimally disturbed or managed forest, and abandoned pasture or fields.

NH DES has authority for jurisdictional wetlands. "Jurisdictional area" means an area that is subject to regulation under RSA 482-A. Jurisdictional Wetlands are defined by using the “Army Corps of Engineers Wetland Delineation Manual”. NHDES does not provide wetland delineation services, so to confirm the presence of a wetland on your property, NHDES recommends contacting a NH Certified Wetland Scientist (CWS). Under New Hampshire Wetlands Law, a Wetlands Permit from the NHDES Wetlands Bureau is required for excavating, removing, filling, dredging, or constructing structures within:

- Surface waters, including the beds and banks of streams, rivers, lakes, and ponds.
- Wetlands, such as emergent wetlands, marshes, wet meadows, and bogs.

Under NH Wetlands Law, RSA 482-A, there are no **buffers or setbacks**. Many municipalities have more stringent standards and include wetlands buffers and setbacks. As such, this ordinance has authority over setbacks and buffers.

C. Procedural Requirements

1. **Presence of Wetland Conservation Overlay District on site.**
 - a. **Where field investigation indicates that a Wetland Conservation Overlay District is present on a proposed development site, those wetlands 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 Wetlands Delineation Manual, Technical Report Y-87-1, (January 1987) or successor document. The hydric soils component of wetlands delineations shall be determined in accordance with the manual Field Indicators for Identifying Hydric Soils in New England (Version 2, July 1998, published by the New England Interstate Water Pollution Control Commission) or successor document. Pursuant to RSA 310-A:75 through 310-A: 87, a Certified Wetland Scientist shall conduct this delineation.**
 - **A Certified Wetland Scientist is defined as: “a person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and**

wetland hydrology acquired by course work and experience, as specified by RSA 310-A:84, II-a and II-b, is qualified to delineate wetland boundaries and prepare wetland maps in accordance with standards for identification of wetlands adopted by the New Hampshire Department of Environmental Services or the United States Army Corps of Engineers or its successor, and who has been duly certified by the board.” (RSA 310A:76) If necessary, a botanist shall be used in conjunction with the wetlands scientist to identify wetland vegetation where required. The botanist shall have equivalent and practical experience to that of the wetland scientist.

- b. Applications for a building permit, subdivision and site plan approval shall locate and depict on the survey/subdivision plat/site plan all Jurisdictional Wetlands, Wetland Buffers, and Wetland Setbacks on the subject parcel. Any applicant seeking said approval(s) shall be responsible for providing this information before the appropriate approval or permit can be granted.
 - c. The entire length of the upland limit of the wetland shall be marked at regular intervals with pink and black striped construction tape prior to, and maintained for the full duration of, any construction-related activities. The applicant may also be required to place and maintain wooden stakes and/or construction tape at appropriate intervals along the wetlands buffer boundary to provide sufficient visual evidence of the buffer boundary during construction, if development is proposed within twenty-five feet of the wetlands buffer. The applicant may be required to affix some form of marker or tag acceptable to the Town to permanently delineate the wetlands buffer boundary at appropriate intervals, as determined by the Conservation Commission and Planning Board, for the purpose of notifying future landowners of the presence of the wetlands buffer. The presence of wetlands on residential properties created as part of a major subdivision shall be documented in the parcel’s deed.
2. The Land Use Office and/or Code Enforcement Officer shall notify the Conservation Commission of all projects and construction proposed in wetland districts for the purpose of allowing the Commission to make recommendations prior to approval. Consistent with NH RSA 482-A:11 III, the Conservation Commission shall have up to 40 days for regular permits and 21 days for expedited permits to make recommendations relative to the wetlands impact application. The Conservation Commission, in acting on an application for a conditional use permit in the Wetland Conservation Overlay District Setback, may attach recommended conditions, including but not limited to recommendations for more extensive buffers, additional plantings in areas to be re-vegetated, performance guarantees, impact mitigation measures, and a reduction in proposed impervious surfaces.
 3. In the event that the accuracy of the boundaries submitted by the applicant is in question, the Planning Board may call upon the services of a certified wetland scientist and/or botanist to reexamine said area and report the findings to the Planning Board for a boundary determination. The applicant shall pay the cost of said services.

4. The Building Inspector shall not issue a building permit for construction and the Planning Board shall not approve a site plan or subdivision plat unless such construction activity or proposal conforms to the provisions of this Chapter.
5. Standards established herein shall constitute the rules of overlay zones and shall be superimposed over other zoning districts or portions thereof. The provisions herein shall apply in addition to all other applicable ordinances and regulations. In the event of a conflict between any provision herein and any other regulation, the more-restrictive requirement shall control.
6. The Town shall have the power to enforce this section, and violations may be punishable by fines as provided by RSA 676:17.

D. Wetland Buffer and Wetland Setback Requirements:

1. No septic system, leach field or other waste-disposal facility shall be installed closer than fifty (50) feet of any point in a wetland. Any more stringent State rule shall supersede this Article.
2. Under [RSA 485-A](#), the [NHDES Subsurface Systems Bureau](#) requires that new septic systems be installed at least 75 feet from wetlands that contain very poorly drained soils and 50 feet from wetlands having poorly drained soils.
3. Building structures, roads, and parking areas, shall not be allowed closer than fifty (50) feet from any point in a wetland. The area between the building structures and **Wetland Buffer** shall be stabilized with lawn or plantings.
4. **A Wetland Buffer.** Is a designated area of undisturbed land with a width of 25-ft. (unless significant wetlands where said width shall be 50-ft.) that is contiguous or adjacent to a wetland that is required for the continued maintenance, function, and ecological stability of the wetland
5. **Wetland Setback.** Is all of that landward land area defined by the minimum required horizontal setback distance of 25-ft. feet from a delineated wetland buffer, and a line parallel thereto. Includes but is not limited to those shrubs, trees and/or ground covers planted to create, replace, ~~or~~ augment, or enhance any or all of those qualities of any ~~naturally vegetated buffer~~ "Wetland Buffer" as used and defined by this ordinance.

E. Permitted Uses.

1. **Within the Wetland Setback**
 - a. Any use otherwise permitted by this Chapter, except on-site sewage disposal

systems and principal structures, may be permitted in a ~~Wetland Conservation Overlay District~~ buffer the Wetland Setback. Any use permitted under Section E (1) a. must first receive conditional use approval as provided for in Section F before any building permit for accessory structures, or subdivision/site plan can be approved.

- b. Crossing of the Wetland Setback as provided for in Section F (1) a.
- c. The construction or reconstruction of fences, footbridges, catwalks, boat docks and wharves does not require a conditional use permit, provided that:
 - Said structures are constructed on posts or pilings so as to permit unobstructed flow of water and are designed in compliance with the New Hampshire Wetlands Board Code of Administrative Rules (WT 400 and 600).
 - The natural contour of the wetland is preserved.
 - All other applicable provisions of the Zoning Ordinance have been met.

2. **Within the Wetland Buffer**

- a. Crossing of the Wetland Buffer as provided for in Section F (1) a.

F. **Conditional Uses**

1. Conditional use approval may be granted by the Planning Board (RSA 674:21 II) after proper public notice and public hearing, for construction within the Wetland ~~Conservation Overlay District or buffer~~ Buffer or Wetland Setback as follows:
 - a. Constructed crossings may include but are not limited to a road or other accessway, utility right-of-way, communication lines, power lines and pipelines, accessory structures, and ancillary parking lots.
 - b. Uses proposed under Section E (1) a. above;
2. Provided that the proposed construction complies with the following standards:
 - a. **Demonstration of Need:** The proposed construction is essential to the productive use of land or water outside the Wetlands Conservation Overlay District.
 - b. **Avoidance:** The potential impacts have been avoided to the maximum extent practicable. The applicant will demonstrate by plan and example that the proposed construction represents the least impacting alternative.
 - c. **Minimization:** Any unavoidable impacts have been minimized. No reasonable Alternative to the proposed construction exists which does not impact a

wetland or which has less detrimental impact on a wetland. Design, construction, and maintenance methods will be prepared by a registered engineer to minimize detrimental impacts to the wetlands and will include restoration of the site as nearly as possible to its original grade.

- Mitigation: If the applicant is required by State rules to prepare a compensatory mitigation plan, the applicant shall provide the Conservation Commission and Planning Board with one copy each of said plan for their review.
 - Approval for the wetlands impact has been received from the NHDES Wetlands Bureau pursuant to Section G (3), below.
3. The burden of proof that the conditions specified in Subsection F (2) above have been met shall be the responsibility of the person(s) requesting the conditional use approval, except as herein provided.
 4. The conditional use approval shall apply only to the project specified at the time of approval and shall not be transferable to a different project.
 5. If deemed necessary by the Planning Board, prior to the granting of a conditional use approval, the applicant shall agree to submit a performance security to ensure that all operations are carried out in accordance with an approved design. This security shall be submitted in an amount sufficient to complete all specified work and repair damage to any wetland area in which no work has been authorized. The security shall be submitted in an amount, with surety and conditions satisfactory to the Planning Board. The security shall be submitted and approved prior to issuance of any permit authorizing construction.
 6. The Planning Board may assess the applicant reasonable fees to cover the costs of special investigative studies and for the review of documents required by applications.

G. Special Exceptions for Existing Lots:

1. On an existing lot, the erection of a structure or septic system within the wetland may be permitted by special exception if the Zoning Board of Adjustment, after due public notice and public hearing, finds that such exception complies with all other applicable requirements set forth in this Article and with each of the following:
 - a. The lot upon which the exception is sought was an official lot of record, as recorded in the Strafford County Registry of Deeds, or has been accepted and subsequently approved by the Planning Board prior to the date on which this Article was posted and published in the Town, August 20, 2003.
 - b. The use for which the exception is sought cannot reasonably be carried out on a portion or portions of the lot, which are outside the wetland.

- c. The design and construction of the proposed septic system will, to the extent practical, be consistent with the purpose and intent of this Article.
 - d. The proposed septic system will not create a threat to individual or public health, safety and welfare, such as the degradation of ground or surface water, or damage to surrounding properties.
2. Prior approval shall be obtained from the Planning Board where site plan review is required. At the time of submission to the Zoning Board of Adjustment, the Conservation Commission, and the Code Enforcement Officer shall be informed of the application for special exception.
 3. This Ordinance shall not prohibit the construction of principal and accessory structures within the **Wetland** buffer **or Wetland Setback** ~~or~~ for unimproved lots that were approved for subdivision by the Planning Board or which otherwise legally existed on or before August 20, 2003.

H. Provisions for Existing Uses:

1. Structures and uses existing prior to the date on which this Article was enacted may be continued, provided that such uses shall not be expanded further to encroach upon the wetland , ~~or buffer zone-wetland buffer or setback.~~
2. Notwithstanding other provisions of this Article, the construction of attached additions to one to three-family dwellings shall be permitted within the wetland buffer **or setback**, provided that:
 - a. The dwelling lawfully existed prior to the date on which this Article was enacted.
 - b. The number of dwelling units is not increased.
 - c. The proposed construction conforms to all other applicable Ordinances and Regulations of the Town of Milton.
3. Where an existing building within the wetland ~~or buffer~~ **or setback zone** is destroyed or in need of extensive repair, it may be rebuilt, provided that such rebuilding is completed within one (1) year of the event causing destruction, the new or rebuilt structure shall not extend further into the wetland ~~or buffer~~ **or setback zone** than the original foundation and the result will not be a new or increased threat to the wetland.

I. Lot Size Determination in Wetlands:

1. Wetlands may be used to ~~fill~~ **count for** up to twenty-five percent (25%) of the minimum lot size or density requirements of Town Ordinances and Subdivision and ~~Planned Unit Development Site Plan Review~~ Regulations, provided that the non-wetland area is sufficient in size and configuration to

adequately accommodate all buildings and required utilities, such as sewage disposal and water supply, including primary and auxiliary leach field locations, within required zoning setbacks from the wetland area.

2. Lots served by municipal water and sewer may use wetlands to **count for** up to fifty percent (50%) of the minimum required lot size.
3. No areas of surface water may be used to satisfy minimum lot sizes.

J. Reclassification of Wetlands - Challenge of classification. If the wetland classification is challenged by the applicant, an abutter, a landowner, the Code Enforcement Officer, the Conservation Commission or the Planning Board, petition shall be made, in writing, by the challenger to the Zoning Board of Adjustment. The Zoning Board of Adjustment shall determine whether a certified wetlands scientist shall conduct an on-site investigation and at the expense of the applicant. The certified wetland scientist's investigation shall be in accordance with Section A.1. of this Ordinance.

K. Restoration of Altered Soils - Any wetland altered in violation of this chapter shall be restored at the expense of the violator(s) **within one year from violation notification. Proper restoration requires the submittal of a Certified Wetland Scientist approved Wetland Restoration Plan. Failure to comply shall result in the Town contracting the restoration and billing the landowner.**

L. Additional Information - No approval or waiver of permits by State or Federal Agencies shall preempt the ability of the Planning Board or the Zoning Board of Adjustment to seek additional information or to make an independent judgment as to the acceptability of a lot or alteration of land.