

## DRAFT 3

### ARTICLE IX

#### WETLAND AND WATERSHED PROTECTION DISTRICT

##### A. Authorities and Purpose

- 1) Establishment of this ordinance with the authority vested in the Fremont Planning Board by the voters of the Town of Fremont, NH on March 11, 1947 and the authority vested in the Conservation Commission by the voters of the Town of Fremont, NH on RSA 36-A:1-6.
- 2) Purpose: In the interest of public health, convenience, safety, and welfare, the regulation of the District are intended to guide the use of areas of lands draining into wetlands, rivers, brooks, ponds; to control building and land uses which would contribute to pollution of surface and ground water by sewage; to prevent the destruction of watershed areas and wetlands which provide flood protection, recharge of ground water supply, and augmentation of stream flow during dry periods; to prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities which arise because of the inharmonious use of watershed areas and wetlands; to encourage those uses that can be appropriately and safely located in this district.
- 3) *All wetlands ~~that meet the definition in the CI~~ in this Article are subject to the jurisdiction of the NHDES Wetlands Bureau and a permit is required to dredge or fill them.*

##### B. Administration

- 1) Administration of the provisions of this ordinance shall be coordinated with the Fremont Conservation Commission through the designated commission member represented on the Fremont Planning Board. Responsibilities of said member shall be consistent with RSA 36:0 and RSA 36-A:2-3.
- 2) To the extent possible, the Watershed Protection District shall, through the Planning Board, maintain close coordination with surrounding watershed districts and regional watershed authorities.

##### C. Definitions

- 1) Wetlands: 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 adopted for life in saturated soil conditions. Wetlands will be delineated *by a New Hampshire Certified Wetland Scientist* according to the following standards: US Army Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1 (January, 1987); Field Indicators for Identifying Hydric Soils in New

England (Current Version) NEIWPC Wetlands Work Group (2006); National List of Plant Species That Occur in Wetlands: Northeast (Region 1). U.S. Fish and Wildlife Service (May 1988); Code of Administrative Rules. Wetlands Bureau, State of New Hampshire (Wt 301.01).

- 2) **Watershed Protection Area:** Watershed Protection Area shall mean an area of land surrounding wetlands for the purpose of controlling building and land uses which would contribute to the pollution of surface and ground water, and preventing the destruction of watershed areas and wetlands which would provide flood protection. Land areas designated as Watershed Protection Areas shall comply with the provisions of Section E.
  - i. **Watershed Protection Area 1:** - Perennial streams; (Rivers, Brooks, named ponds and all Prime Wetlands) shall include all lands within one hundred fifty (150) feet of the mean annual high of the Exeter River, Piscassic River, Loon Pond, Red Brook, and Brown Brook and other perennial streams.
  - ii. **Watershed Protection Area 2:** - Intermittent streams: any stream, pond, or vernal pool having flowing or standing water for six (6) months of the year shall include all lands within one hundred (100) feet of the center line of said brook or stream and one hundred (100) feet from the mean annual high of said pond.
  - iii. **Watershed Protection Area 3:** - Wetlands: shall include that land area within seventy five (75) feet of any wetland greater than three thousand (3,000) square feet.
  - iv. Sections i – iii above shall be considered minimum buffer areas for watershed protection. In certain cases the Board may require increased watershed boundaries when considering, but not limited to, the following: when areas abutting watershed protection areas have excessive inclines of twelve (12) percent or greater, importance of watershed to water supply, importance of watershed to wildlife habitat. If the Board makes a determination that increased watershed protection is necessary, the Board may require the watershed protection area to be increased by up to and not to exceed one hundred (100) feet.
- 3) **Prime Wetlands:** Shall mean any areas falling within the jurisdictional definitions or RSA 482-A:3 and RSA 482-A:4 that possess one or more of the values set forth in RSA 482-A:1 and that, because of their size, unspoiled character, fragile condition or other relevant factors, make them of substantial significance. Prime wetlands are shown on the Fremont Prime Wetland Tax Map overlay.

*A: Reference NH RSA 482-A: 11, IV.*

- 4) Vernal Pool means a surface water or wetland which provides breeding habitat for amphibians and invertebrates that have adapted to the unique environments provided by such pools and which typically have the following characteristics:
  - a. Cycles annually from flooded to dry conditions, although the hydroperiod, size, and shape of the pool might vary from year to year;
  - b. Forms in a shallow depression or basin;
  - c. Has no permanently flowing outlet;
  - d. Holds water for at least two continuous months following spring ice-out;
  - e. Lacks a viable fish population; and
  - f. Supports one or more primary vernal pool indicators, or 3 or more secondary vernal pool indicators.

D. Uses Permitted: Any of the following uses that do not result in the erection of any dwelling or building in public or private use or alter the surface configuration (except as permitted) of the land may be permitted in this district consistent with State and Federal wetland regulations:

- 1) Forestry, tree farming, within the limits of RSA 224:44a.
- 2) Agriculture, including grazing, farming, and harvesting of crops, except that mink farms and piggeries shall not be included in this district.
- 3) Drainage ways, treatment swales, streams, creeks, or other paths of normal run-off water.
- 4) Water impoundments, detention basins, and well supplies.
- 5) Wildlife refuge.
- 6) Open space as may be permitted by subdivision regulations and other sections of this ordinance.

E. Special Provisions

- 1) No waste disposal system may be located closer than one hundred (100) feet to any wetland.
- 2) No waste disposal system may be located within a watershed protection area.
- 3) Wetlands shall not be used to satisfy the minimum lot area and setback requirements but may be included in the total lot area.

- 4) Watershed protection areas may be included in the minimum lot size requirements. All dwellings, structures, or parking areas shall have no portion within the Watershed Protection Area.

F. Prime Wetlands: In accordance with RSA 482-A:15 the wetland system commonly known as “Spruce Swamp” and other designated wetland systems described in documents and maps filed by the Planning Board and Conservation Commission with the Town Clerk and State of New Hampshire Department of Environmental Services, is hereby designated as a prime wetland. Prime wetlands are shown on the Fremont Prime Wetland Tax Map overlay.

G. Special Exceptions: The Board of Adjustment, after proper public notice and public hearing, may grant special exceptions for the following uses within the district, the application for such uses having been referred by the Planning Board for site plan review, the Conservation Commission, the Health Officer and Building Inspector and reported on by all four (4) prior to the public hearing or thirty (30) days have elapsed following such referral without receipt of such reports.

- 1) Recreation, including golf courses, parks (but not an amusement park), boating, fishing, landings, picnic areas and any non-commercial passive recreation use.
- 2) Dredging, filling, drainage (~~in compliance with the RSA 149:8a~~) or otherwise altering the surface configuration of the land; streets, roads and other access ways and utility rights if essential to the productive use of land if so located and constructed as to minimize any detrimental impact of such uses upon the wetland and watershed protection areas.
- 3) Proper evidence to this effect shall be submitted in writing to the Board of Adjustment and shall be accompanied by a functional analysis of the wetland and shall include an evaluation of alternatives to determine a demonstrated need for the impact. A mitigation plan for such impacts within the watershed protection area shall be included.

A) *The above evaluations must be submitted by an independent New Hampshire Certified Wetland Scientist.*

H. 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
Prime Wetlands <i>and Perennial Streams in Watershed Protection Area 2-1</i>	Any size	n/a	150 feet
All Wetlands <i>and Intermittent Streams in Watershed Protection Area 1-2</i>	All Sizes	Contiguous with Surface Waters	100 feet
<i>Vernal Pools</i>	<i>All Sizes</i>	<i>n/a</i>	<i>100 feet</i>
Wetlands	Greater than 3,000 square feet <i>and less than 20,000 square feet</i>	Not Contiguous with Surface Waters	75 feet
	Less than 3,000 square feet	Not Contiguous with Surface Waters	25 feet

I. Buffers: The following vegetative buffers shall be observed in order to protect the integrity and functionality of the wetlands resources referenced below.

Resource	Size of Resource	Type of Buffer	Size of Buffer
Prime Wetlands <i>and Perennial Streams in Watershed Protection Area 1</i>	All sizes	Limited-Cut*	150 Feet
		No-Cut and No-Disturbance	50 Feet
<i>All Wetlands &amp; Perennial Intermittent Streams in Watershed Protection Area 2</i>	<i>Wetlands over 20,000 square feet</i>	No-Cut and No-Disturbance	50 Feet
Vernal Pools	All sizes <del>greater than 20,000 square feet</del>	No-Cut and No-Disturbance	50 Feet
All other Wetlands	Greater than 3,000 <i>and less than 20,000</i> square feet	No-Cut and No-Disturbance	25 Feet

*\* Tree cutting must follow the standards of the NHDES Comprehensive Shoreland Protection Act. Live trees and saplings may be removed provided certain criteria are met. Starting from the northerly or easterly boundary of the property, and working along the Prime Wetland boundary, divide the buffer into 50 feet x 50 feet segments. Within each segment a minimum combined tree and sapling score of at least 50 points must be maintained.*

*Calculating the tree and sapling score within a 50 foot by 50 foot segment:*

*Determine each tree and sapling circumference 4½ feet above the ground, uphill side and score as follows:*

***Diameter of Tree or Sapling Score***

*1 inch to 6 inches = 1 pt*

*6 inches to 12 inches = 5 pts*

*Greater than 12 inches = 10 pts*

***Prior to cutting a report and map must be prepared and submitted to the Fremont Conservation Commission or their designee for approval.***

- J. Test Procedures: Soil testing procedures shall be subject to the prior review, approval and on site inspection by the Planning Board or its designate. Such procedures shall be conducted by, and at the expense of, the landowner/ subdivider. A complete record of the tests shall be submitted to the Selectmen and placed on file with the Planning Board.