

ARTICLE I

PART B

WETLAND AND SURFACE WATERS CONSERVATION DISTRICT

SECTION 1 – TITLE & AUTHORITY

- A. Title: The title of this District shall be the Wetland and Surface Waters Conservation District; and this Article shall be identified as the Wetland and Surface Waters Conservation District Ordinance of the Town of Sandown, New Hampshire.
  
- B. Authority: This Ordinance is adopted under Authority granted pursuant to RSA 674:16 entitled Grant of Power; and RSA 674:21 entitled Innovative Land Use Controls. In administering this Innovative Land Use Control Ordinance, the Planning Board shall enjoy the authority to grant Conditional Use Permits and Special Use Permits when an applicant is able to demonstrate to the satisfaction of the Planning Board that granting such Permits will not compromise achievement of the stated Purpose of this Article. Any appeal of a decision made by the Planning Board in administering this Innovative Land Use Control Ordinance must be made to Superior Court pursuant to the provisions of RSA 676:5, III and RSA 677:15.

SECTION 2 – PURPOSE

The Purpose of the Wetland and Surface Waters Conservation District is to protect the health, safety and general welfare of the public by promoting both the most appropriate use of land and by protecting wetland and surface water ecosystems and water quality in accordance with the goals and objectives of Sandown's adopted Master Plan. Wetlands, Surface Waters of the State and associated Buffers situated in the Town of Sandown are recognized as a valuable natural resource requiring careful management in order to preserve their benefits to public health, safety and welfare. Correspondingly, the Town of Sandown hereby acknowledges that Buffers associated with Wetlands and the Surface Waters of the State:

- A. Prevent the destruction of or significant changes to, those Wetland areas, related water bodies and adjoining land which provides flood protection;
- B. Protect persons and property against the hazards of flood inundation by ensuring the continuation of the natural flow patterns of streams and other watercourses;
- C. Provide for nutrient attenuation and augmentation of stream flow during dry periods;
- D. Preserve and protect important wildlife habitat; critical wetland habitat of Threatened and Endangered Species; and maintain ecological balance;
- E. Prevent the expenditure of municipal funds for the purposes of providing and/or maintaining essential services and utilities which might be required as a result of abuse or inharmonious use of Wetlands;

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- F. Protect Wetlands, watercourses, surface and groundwater supplies and water bodies within the Town of Sandown from degradation; and
- G. Preserve and enhance those aesthetic values associated with the Wetlands and Surface Waters Conservation District.

### SECTION 3 – APPLICABILITY

Unless exempted by specific provision, all proposed Development, removal of vegetation in excess of Comprehensive Shoreland Protection Act limits, and alteration of terrain within the Wetland and Surface Waters Conservation District shall be subject to the provisions of this Article.

### SECTION 4 – WETLAND AND SURFACE WATERS CONSERVATION DISTRICT BOUNDARIES

- A. The Wetland and Surface Waters Conservation District shall include:
  - 1. All Surface Waters of the State, as defined in RSA 485:A.2, as well as a 50 foot Buffer measured outward from their respective Reference Lines; and
  - 2. All Wetlands hydrologically connected and contiguous to the Surface Waters of the State, as well as a 50 foot Buffer measured outward from their boundaries; and
  - 3. All isolated Wetlands having a contiguous area of 10,000 square feet or more, as well as a 50 foot Buffer measured outward from their boundaries; and
  - 4. Those Wetland of Special Interest, identified in the “Town of Sandown Wetland Evaluation Report”; prepared by West Environmental Consultants, Inc.; and dated August, 2008 (a copy of said Report is on file at the Sandown Town Offices and shall be considered an integral part of this Ordinance), as well as a 50 foot Buffer measured outward from their boundaries; and
  - 5. All Vernal Pools, as well as a 50 foot Buffer measured outward from their boundaries.
- B. The Wetland and Surface Waters Conservation District shall not include those Wetland areas which have developed as a result of the construction of storm water treatment and/or detention facilities, agricultural use, waste treatment, or other Water Dependent Structures or uses, and manmade facilities.
- C. The Surface Water Resources Map, on file at the Sandown Town Offices, is based upon: information obtained from the National Wetlands Inventory Map; information contained in the “Town of Sandown Wetland Evaluation Report”, prepared by West Environmental Consultants, Inc. and dated August 2008; and other sources. The Surface Water Resources Map is intended to only provide a general indication in regard to the location of Wetlands and Surface Waters of the State within Sandown. For the purposes of administering this Article, all Surface Waters of the State, Wetlands, and Vernal Pools shall be field delineated and defined by a Certified Wetland Scientist in accordance with the methodology and criteria

established in The U.S. Army Corps of Engineers Wetland Delineation Manual, Technical Report Y-87-1, dated January 1987. A plan depicting the resulting delineation shall be submitted to the Building Inspector (in the case of a request for a building permit application or other activity not subject to Planning Board approval under applicable local regulation or ordinance), or to the Planning Board (as part of any land use application or activity which requires approval from the Planning Board under applicable local regulation or ordinance). All expenses incurred in the identification and delineation of Wetland and Surface Waters Conservation District boundaries shall be borne by the applicant. The Surface Water Resources Map may be amended from time to time to incorporate the results of any delineation data accepted by either the Building Inspector or Planning Board as applicable.

- D. The identification and delineation of Wetland boundaries requires a field-conducted evaluation of soils, hydrology and plants by a Certified Wetland Scientist, unless exempted under New Hampshire Law (RSA 310-A, RSA 482-A , or the New Hampshire Code of Administrative Rules - Part Env-Wt 100-800). Three indicators are used to identify wetlands:
1. The presence of water at or near the ground surface for part of the growing season; and
  2. The presence of hydric soils; and
  3. The predominance of plants adapted to living in saturated soils.
- E. Boundary Disputes. When any boundary of the Wetlands and Surface Waters Conservation District is disputed by either the Town or by an applicant, the Planning Board, at the applicant's expense, may engage an independent Certified Wetland Scientist to determine the location of the Wetland and Surface Waters Conservation District. The independent Certified Wetland Scientist's delineation shall be consistent with DES Wetlands Bureau Administrative Rules, as amended; and shall include New England District Wetland Delineation Datasheets (US Army Corps of Engineers, 2000). The independent Certified Wetland Scientist shall transmit his/her findings to both the Conservation Commission and Planning Board. The Planning Board, after consultation with the Conservation Commission, shall make a final determination regarding the Wetland and Surface Waters Conservation District boundaries.

## SECTION 5 – DEFINITIONS

**Adjacent:** Bordering, contiguous, or neighboring. The term includes Wetlands that directly connect to other waters of the United States, or that are in reasonable proximity to these waters, but physically separated from them by man-made dikes or barriers, natural river berms, beach dunes, and similar obstructions.

**Buffer:** The protected upland areas Adjacent to and measured perpendicular from the edge of Surface Waters of the State, Wetlands and Vernal Pools.

**Certified Wetland Scientist:** A qualified wetland scientist certified by the New Hampshire Joint Board of Licensure and Certification of Natural Scientists as defined by RSA 310-A:76, II a.

**Development:** Any human-made change to improved or unimproved land, including but not limited to buildings, or alteration to the land surface that results in the removal of vegetation in excess of what is permitted under the Comprehensive Shoreland Protection Act - RSA 483-B.

**Endangered Species:** Those native species whose prospects for survival in New Hampshire are in danger because of a loss or change in habitat, over-exploitation, predation, competition, disease, disturbance or contamination. Assistance is needed to ensure continued existence as a viable component of the State's wildlife

community.

**Hydric Soils:** Soils that are saturated or flooded during a sufficient portion of the growing season to develop anaerobic conditions in the upper soil layers.

**Reference Line:** The natural mean high water level of a fresh water body or ordinary high water mark of a pond, lake, brook, river, or stream.

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

**Threatened Species:** Those species which may become endangered if conditions surrounding them begin, or continue to decline.

**Vernal Pool:** A body of water, typically seasonal, that provides essential breeding habitat for amphibians and invertebrates, which meets the criteria established by the New Hampshire Code of Administrative Rules, Part Env-Wt 101.99.

**Water Dependent Structures:** A structure such as a dock, wharf, pier, breakwater, manmade beach, boathouse, retaining wall, boat launch ramp, bridge, culvert, or other structure, or any part thereof, built, on, or in the Surface Waters of the State.

**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.

## SECTION 6 - PERMITTED USES

The following uses shall be permitted by right within the Wetland and Surface Waters Conservation District:

- A. Passive recreation such as hiking, fishing, hunting on foot, and boating.
- B. Wildlife or fisheries management.
- C. Scientific research and educational activities.
- D. Parks, natural and conservation areas, and open space areas.
- E. Agriculture and agricultural uses, as defined under RSA 21-34-a. consistent with best management practices published by the NH Department of Agriculture, Markets and Food.
- F. Tree farming, silviculture, forestry, and forest management consistent with best management practices published by the NH Department of Resources and Economic Development and UNH Cooperative Extension.
- G. Replacement or repair of existing septic systems or water wells, which are confirmed to be in failure, which may be situated within 75 feet of Surface Waters of the State, Wetlands or Vernal Pools, including: well heads; water lines; septic tanks; sewer lines; leach fields; and basal areas provided: (1) the septic system or well requiring replacement or repair was situated within the District prior to the adoption of this Article; (2) prior to replacement or repair, the person seeking to undertake the replacement or repair has obtained all applicable State and local construction approvals and permits; and (3) the replacement or repair will not

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expand the intensity of use of the Structure(s) it is intended to serve.

- H. Water wells, except for Large Water Withdrawal Wells as defined under the New Hampshire Code of Administrative Rules.
- I. Repair and maintenance of existing: above and below ground public and private utility transmission lines and appurtenant facilities; Water Dependent Structures, streets, roads, and other public and private ways, including driveways and trails; bridges; culverts, storm drains, and storm water management facilities.

All uses not specifically identified as a Permitted or Conditional Use under the terms and conditions of this Article shall be deemed to be a Prohibited Use within the Wetland and Surface Waters Conservation District.

SECTION 7 - CONDITIONAL USES

Any use not identified as a Permitted Use under Section 6 of this Article is recognized as having a potential to adversely affect lands situated within the Wetland and Surface Waters Conservation District and therefore prove contrary to the Purpose of this Article. However, the following uses of land in the Wetland and Surface Waters Conservation District may be permitted through issuance of a Conditional Use Permit by the Planning Board, provided the Board objectively determines such use or uses will not be expected to significantly impair the function and values of resources situated within the District:

- A. Accessory structures, with a combined footprint of less than 500 square feet, associated with a legally existing primary structure, provided the applicant demonstrates that no practicable alternative exists elsewhere on the lot and outside the Wetland and Surface Waters Conservation District.
- B. The construction or expansion of streets, roads, and other access ways, including driveways, footpaths, bridges, and utility right of way easements including power lines and pipe lines, if essential to the productive use of land Adjacent to the Wetland and Surface Waters Conservation District. These uses shall be located and constructed in such a way as to minimize the potential for detrimental impact to the District and be planned, designed and constructed in a manner consistent with applicable State and local standards. Such construction or expansion may be permitted within the District only when no viable alternative is available.
- C. Water impoundments for the purposes of creating a water body for wildlife, fire safety, or recreational use. Conditional Use Permits may be granted for the construction of impoundments for on-site detention and/or the treatment of storm water runoff in the Wetland and Surface Waters Conservation District provided the Planning Board finds that it is not practical or possible to locate them outside of the District.
- D. Other uses, which the applicant is able to demonstrate to the satisfaction of the Planning Board, that will not significantly interfere with Wetland functions and values, water quality, or wildlife habitat, pursuant to the statement of Purpose contained in Section 2 of this Article.

E. The installation, modification or repair of Water Dependent Structures.

## SECTION 8 – SPECIAL USE PERMITS FOR NONCONFORMING USES AND STRUCTURES

A. Expansion of a nonconforming use or Structure situated within the Wetland and Surface Waters Conservation District may be permitted through the issuance of a Special Use Permit by the Planning Board provided the Planning Board finds the proposed expansion conforms to the following performance standards:

1. The encroachment upon the Surface Water, Wetland, or Vernal Pool is not increased;
2. The expansion is located as far from the Surface Water, Wetland, or Vernal Pool as possible; and located so as to minimize disturbance of existing vegetation in the District; and
3. Review by the Conservation Commission and/or its appointed representative on behalf of the Planning Board finds that any potential decrease in Wetland function and values resulting from the activity or use will be properly mitigated on the site. Mitigation strategies may include, but are not limited to: planting of indigenous vegetation in the Wetland Buffer where none exists; improving existing or implementing new storm water management and treatment; and the removal of excess impervious surfaces.

## SECTION 9 – SPECIAL USE PERMIT APPLICATION PROCEDURES

A. As part of a Special Use Permit application, a proposal for which a local building permit is sufficient to otherwise permit the use or activity, shall be made on forms supplied by the Planning Board and shall include a narrative and/or site plan containing the following information on one or more pages at a scale suitable to illustrate the details of the project, as well as a report demonstrating compliance with the requirements of Section 10.B of this Article. The applicant shall not be required to provide: a map showing Wetlands and other significant hydrological features on adjacent properties, (although written acknowledgement of the same is required); names and addresses of owners and holders of conservation restrictions and easements of abutting property; soil types; topographic contours; and surface drainage patterns.

## SECTION 10 - CONDITIONAL USE PERMIT APPLICATIONS PROCEDURES

A. Application for a Conditional Use Permit shall be made on forms supplied by the Planning Board and shall include a narrative and/or site plan containing the following information on one or more sheets at a scale suitable to illustrate the details of the project, as well as a report demonstrating compliance with the requirements of Section 10.B. As a minimum, each application shall depict or identify:

1. A North arrow and date of site plan preparation;
2. Property lines;
3. The location of Wetlands and other significant hydrological features;
4. Names and addresses of owners and holders of conservation restrictions and easements on abutting properties;
5. Limits of Surface Waters, Wetlands and Vernal Pools and applicable Buffers;
6. Soil types;
7. Vegetation types;
8. Topographic contours at no greater than 2 foot intervals;
9. Surface drainage patterns;
10. Existing and proposed development, removal of vegetation, and alteration of the land surface conditions;
11. Computation of the extent of Wetland and/or Buffer areas to be impacted, in square feet of surface area and cubic yards of cut and fill;
12. Storm water management proposed during and after construction; and
13. Erosion and sedimentation control practices proposed for use during construction.

B. The Planning Board shall: consider all relevant facts and information prior to making a decision on any application for a Conditional Use Permit; find that the project is both consistent with the stated Purpose of this Ordinance; and find that to the extent possible, the project minimizes impacts to land situated within the Wetland and Surface Waters Conservation District, including but not limited to the following:

1. The proposed activity minimizes the degradation to, or loss of Wetland and Wetland Buffers, and compensates for adverse impact to the functions and values of Wetland and Wetland Buffers, including but not limited to the capacity of the Wetland to:
  - a. Support fish and wildlife;
  - b. Attenuate flooding;
  - c. Supply and protect surface and ground water resources;
  - d. Remove sediments;
  - e. Remove pollutants;
  - f. Support wetland vegetation;
  - g. Promote public health and safety; and
  - h. Moderate fluctuations in surface water levels.
2. The proposed activity will have no significant negative environmental impact to abutting or downstream properties and/or hydrologically connected water and/or Wetland resources, including:

- a. Increased potential for erosion, siltation and turbidity of Surface Waters;
  - b. Loss of fish and wildlife habitat;
  - c. Loss of unique habitat having demonstrable natural, scientific, or educational value;
  - d. Loss or decrease of beneficial aquatic organisms and Wetland plants;
  - e. Increased danger of flooding and/or transport of pollutants; and
  - f. Destruction of the economic, aesthetic, recreational and other public and private uses and values of the Wetland to the community.
3. The proposed activity or use cannot practicably be located otherwise on the site to eliminate or reduce impact to the Wetland and Surface Waters Conservation District.
  4. The proposed activity utilizes applicable best management practices.
  5. All applicable Federal and/or State Permit(s) have been received for the proposed activity in accordance with New Hampshire Code of Administrative Rules – Part Env-Wt 100-800 and Section 404 of the Federal Clean Water Act .
  6. Where applicable, proof of compliance with all other State and/or Federal requirements has been received.
- C. The Conservation Commission and/or its representative on behalf of the Planning Board, in reviewing an application for a Conditional Use Permit in the Wetland and Surface Waters Conservation District, may recommend conditions to its approval, if deemed necessary to mitigate any adverse effects of the activity or use, including but not limited to: more extensive Buffers; additional plantings in areas to be revegetated; performance guarantees; and reductions in proposed impervious surface coverage.
- D. The applicant shall provide to the Conservation Commission the following to facilitate their review of any Conditional Use Permit application:
1. A cover letter identifying both a contact person and if a different individual, the name(s) of the/those persons responsible for seeing that any work ultimately permitted is properly implemented;
  2. Written permission for access for periodic inspections by local officials including the Conservation Commission, their employees and designees; and
  3. A copy of plans and other application materials specified in Section 10.A above.
- E. Any expenses incurred by the Conservation Commission or Planning Board in conducting their review,

inspection and administration of a Conditional Use Permit application shall be assessed to the applicant's PREA account maintained by the Planning Board.

- F. The Conservation Commission and Planning Board reserve the right to require an as-built plan be received prior to the release of any performance guarantee required as a condition of approval, if it is believed the extent of work completed varies from that approved through any Conditional Use Permit issued under the provisions of this Article.
- G. Prior to making a decision in regard to the possible approval of any Conditional Use Permit application, the Planning Board shall afford the Conservation Commission an opportunity to provide written comment on the application and shall not approve any such application without receipt of a favorable recommendation from the Conservation Commission.

#### SECTION 11 - IDENTIFICATION OF DISTRICT BOUNDARIES

As a condition of Conditional Use Permit issuance, the Planning Board may require an applicant to: delineate all or a portion of the Wetland and Surface Waters Conservation District Boundary on the ground, using stakes or visible flagging prior to the commencement of construction activities; maintain such stakes or flagging for the full duration of construction-related activities; install permanent Monumentation at those points defining the boundaries of the Wetland and Surface Waters Conservation District (if so required, the location and type of such Monumentation shall be depicted on the final project plans); and/or install and maintain placards on trees or other durable objects (e.g., 4" x 4" wood posts) at specified intervals along the boundaries of the Wetland and Surface Waters Conservation District.