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[DELETION SHOWN IN STRIKETHROUGH]

§334-6. Definitions

~~WETLAND CONSERVATION DISTRICT~~

~~All wetland areas, surface water bodies and areas of poorly drained or very poorly drained soils and the associated wetland buffers, as defined above. The "Wetland Conservation DISTRICT" is an overlay DISTRICT which adds requirements and restrictions to those of the underlying zone in order to preserve the function of a wetland area.~~

~~WETLAND BUFFER~~

~~A naturally vegetated upland zone of noninterference extending 50 feet from the edge of a wetland area, or from the top of the bank of a surface water body toward the adjacent upland environment. "Naturally vegetated" includes uncut or undisturbed forest and abandoned pasture or fields.~~

[REPLACE THE ENTIRETY OF ARTICLE IX – WETLAND CONSERVATION DISTRICT WITH THE FOLLOWING]

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Wetland Conservation Overlay District

§ 334-33 Authority and purpose.

The title of this district shall be the Wetlands Conservation Overlay District. This ordinance is adopted under authority granted pursuant to RSA 674:16, Grant of Power and 674: 21, Innovative Land Use Controls. All proposed development, removal of vegetation, and alteration of the land surface within the Wetlands Conservation District is subject to this ordinance.

The purpose of the Wetland 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 Hudson's Master Plan.

All proposed development, removal of vegetation, and alteration of the land surface within the Wetlands Conservation Overlay District is subject to this Article.

The wetlands and buffers in the Town of Hudson are a valuable natural resource requiring careful management to maintain their usefulness to public health, safety and welfare. The Town of Hudson finds that wetlands and buffers:

- A. Prevent the destruction of, or significant changes to, those wetland areas, related water bodies and adjoining land which provide 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 water- courses.

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- C. Provide for nutrient attenuation and augmentation of stream flow during dry periods.
- D. Preserve and protect important wildlife habitat 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.
- F. Protect the wetlands, watercourses, surface and groundwater supplies and waterbodies of the Town from degradation.
- G. Preserve and enhance those aesthetic values associated with the Wetlands Conservation Overlay District.

§ 334-34 **Definitions.**

Reference shall be made to §334-6 - Definitions of this ordinance for the definition of words and terms used throughout this Wetland Conservation Overlay District Ordinance.

[The terms below would be added/amended to Article II, or can remain within this article if it presents conflicts elsewhere]

BEST MANAGEMENT PRACTICES

The standard described in the current of Erosion and Sediment Control Design Handbook for Developing Areas of New Hampshire prepared by United States Department of Agriculture Soil Conservation Services.

BOG

A wetland distinguished by stunted evergreen trees and shrubs, the presence of peat deposits and/or highly acidic soil and/or water conditions as defined in the New Hampshire Code of Administrative Rules issued by the New Hampshire Wetlands Board.

BUFFER

The protected upland areas adjacent to wetlands and surface waters in the Wetlands Conservation Overlay District.

CERTIFIED SOILS SCIENTIST

A professional soils scientist currently certified by the state of New Hampshire pursuant to New Hampshire state statutes and licensed to practice in the state.

CERTIFIED WETLANDS SCIENTIST

A person qualified to delineate wetland boundaries and prepare wetland maps who is currently certified by the State of New Hampshire Board of Natural Scientists, as defined by RSA 310-A:76, II-a.

MARSH

A wetland where the vegetation is distinguished by the absence of trees and shrubs and dominated by soft-stemmed herbaceous plants and other emergent vegetation, such as grasses, reeds and sedges. The water table is at or above the surface throughout the year but

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can fluctuate seasonally.

POORLY DRAINED SOILS

Soils where the water is removed so slowly that the soil is saturated periodically during the growing season or remains wet for long periods of time as defined in the United States Soil Conservation Service Soils Survey of Hillsborough County, Eastern Half (latest edition).

SURFACE WATER

Those portions of waters of the state, as defined by RSA 485-A:2.XIV, which have standing or flowing water at or on the surface of the ground. This includes, but is not limited to, perennial and seasonal streams, lakes, ponds, and tidal waters.

SWAMP

A wetland that is dominated by trees and/or shrubs.

VERY POORLY DRAINED SOILS

Soils where the water is removed so slowly that free water remains at or on the surface during most of the growing season as defined in the United States Soil Conservation Service Soils Survey of Hillsborough County, Eastern Half (latest edition).

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.

§334-35 Boundaries

- A. The Wetlands Conservation Overlay District includes all of the following:
 1. Surface waters.
 2. Wetlands of any size.
 3. A 50-foot wide buffer around wetlands and surface waters.
- B. For the purposes of this ordinance, the reference line of all wetlands and surface waters shall be established by an on-ground delineation performed by a Certified Wetland Scientist. All wetlands, surface waters, and vernal pools shall be field delineated and defined by a Certified Wetland Scientist.
- C. The Wetland Conservation Overlay District shall not include those wetlands 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. In the case of beaver activity, the reference line shall be determined by those areas that meet the jurisdiction of the NH Department of Environmental Services.
- D. When a boundary of the Wetlands Conservation Overlay District is disputed by either the

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Town of Hudson or an applicant, the Conservation Commission, at the applicant's expense, may engage an independent certified wetlands scientist to determine the location of the Wetland Conservation District limit. The delineation shall be consistent with DES Wetlands Bureau Rules, as amended. The independent Certified Wetland Scientist shall transmit their findings to the applicant who shall add said findings to the project plan. This revised plan, showing both wetland delineation boundaries, shall be presented to the Planning Board who shall make the final determination regarding District boundaries.

- E. The entire length of the upland limit of the wetland buffer shall be marked with highly visible construction tape prior to, and maintained for the full duration of, any construction-related activities. The applicant may also be required to place a permanent monument (e.g., iron pin, granite bound) at all points of the lot lines which intersect with the upland limit of the Wetlands Conservation Overlay District prior to such activities. These monuments shall be shown on the site plan submitted with the application. The applicant may also be required to affix tags to trees or other durable objects (e.g., 4" x 4" wood posts) at 50 foot intervals along the upland boundary of the Wetlands Conservation Overlay District, and maintain said tags as needed to provide evidence of the upland side buffer boundary. Tags shall be obtained from the municipality at the applicant's cost.

§ 334-36 Uses within Wetland Conservation District.

- A. Permitted uses: The following uses shall be permitted in the Wetland Conservation District, subject to review by the Conservation Commission and the Planning Board. This review is intended to assure that best management practices are used to prevent degradation of the Wetland Conservation District by slope erosion, sedimentation and chemical and thermal pollution. These uses will not: require the erection or construction of any structure; alter the natural surface configuration by re-contouring or grading of the land, involve filling, dredging, or draining of the wetland; change the flow of water; result in the pollution of the wetlands, surface water, or groundwater; or involve substantial clearing of vegetation, except for the purposes of agriculture or forest management as described below.
 - 1. Forest management in the wetland buffer, consistent with best management practices published by the NH Department of Resources and Economic Development and UNH Cooperative Extension, or their successors.
 - 2. Agriculture, including grazing, cultivation and harvesting of crops, consistent with Best Management Wetland Practices published by the NH Department of Agriculture, Markets and Food or its successor.
 - 3. Passive recreation such as hiking, fishing, hunting on foot, non-motorized boating. Trails shall have minimal impact on drainage, flora and fauna.
 - 4. Wildlife or fisheries management.
 - 5. Water supply wells, public and private.
 - 6. Rehabilitation, repair or replacement of stormwater management facilities or other structures that lawfully existed prior to March 11, 2020.

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B. Prohibited Uses: Any use that is not expressly permitted in §334-36.A, or by conditional use in §334-36.C is prohibited. Prohibited uses that may not be established or expanded within the Wetlands Conservation Overlay District include, but are not limited to, the following:

1. Structures, except as provided in §334-36.C.
2. Salt storage.
3. Automobile junkyards.
4. Solid or hazardous waste facilities.
5. Use of fertilizer on lawns, except lime or wood ash.
6. Bulk storage or handling of chemicals, petroleum products or hazardous materials.
7. Sand and gravel excavations.
8. Processing of excavated materials.
9. Impervious surfaces, except as provided in §334-36.C.
10. Activities which result in soil compaction such as parking vehicles or heavy equipment, except as provided in §334-36.C.
11. Underground tanks.

C. Conditional Uses: Any use not identified as a permitted use listed in §334-36.A is presumed to impair the wetland functions and values unless proven otherwise by an applicant as provided below. The following uses may be granted a Conditional Use Permit by the Planning Board in accordance with §334-37:

1. Accessory structures associated with a legally existing primary structure, provided the applicant demonstrates that no practicable alternative exists elsewhere on the lot and outside of the Wetland Conservation Overlay District.
2. Construction of streets, roads, and other access ways, including driveways, footpaths, bridges, and utilities if essential to the productive use of land beyond the Wetland Conservation Overlay 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 may be permitted within the District only when no viable alternative is available.
3. Water impoundments for the purposes of creating a water body for wildlife, fire protection, stormwater management, or recreational use. Construction of impoundments for on-site detention and/or treatment of stormwater runoff in the Wetland Conservation Overlay District, provided the Planning Board finds that it is not practical or possible to locate them outside of the District.
4. 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

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values, water quality, or wildlife habitat pursuant to the statement of purpose of this ordinance; or in the alternative, uses that will impact wetlands functions and values; but, in the opinion of the Planning Board, are not contrary to the public interest and will result in significant public benefit provided:

- a. Compensatory mitigation is provided such that those Wetland Conservation Overlay District functions and values to be impacted will be off-set in whole. Such mitigation may be located on or off site. As a guide to the type and extent of compensatory mitigation considered, reference shall be made to the New England District Compensatory Mitigation Guidance, US Army Corps of Engineers, New England District, Regulatory Division, 7-22010 as amended.
- b. The applicant has demonstrated avoidance and minimization to the fullest extent practical.

D. Non-Conforming Uses: In addition to Article VIII of the Zoning Ordinance, existing, non-conforming uses are subject to the following in the Wetland Conservation Overlay District:

1. Expansion of a non-conforming use or structure may be allowed by the Zoning Board of Adjustment in the wetland buffer provided that the encroachment upon the wetland is not increased and review by the Conservation Commission finds that any potential increased impact upon the wetland functions will be mitigated.
2. Where an existing, non-conforming use or structure within the Wetland Conservation Overlay District is destroyed or in need of extensive repair, it may be replaced or rebuilt, provided that the provisions of Article VIII of this chapter are met.
3. The replaced or rebuilt use shall not have a greater impact on the Wetland Conservation District than the impact of the original use.

§ 334-37 Conditional Use Permit Criteria

A. The Planning Board shall, in addition to referencing the findings referenced in the preceding section, consider all relevant facts and information prior to making a decision on any application for a Conditional Use Permit; find that the proposed project is consistent with the stated Purpose of this ordinance; and find, that to the extent possible, the project avoids and minimizes impacts to land situated within the District, including but not limited to the following:

1. The proposed activity minimizes degradation of land situated within the District and offsets potential adverse impacts to functions and values of wetlands, surface

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waters, and vernal pools including but not limited to their capacity 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 and their habitat;
 - 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 Conservation Overlay District.
 4. The proposed activity incorporates the use of those Best Management Practices recommended by the New Hampshire Department of Environmental Services and/or other State agencies having jurisdiction.
 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, as amended.
 6. Where applicable, proof of application to all required State and/or Federal permits.
 7. Prior to making a decision on any Conditional Use Permit pursuant to the Wetland Conservation Overlay District, the Planning Board shall receive a written comment from the Conservation Commission. The Conservation Commission may recommend the Planning Board impose conditions of approval is deemed necessary to mitigate the potential for adverse effects of the proposed activity or use.
- B. Application requirements for this Conditional Use Permit are set forth in §276 – Administrative Requirements and Definitions.

§ 334-38 [Reserved]

§ 334-39 [Reserved]