

PETITION to the Board of Selectmen for the Town of Atkinson

Signature	Name (please print)	Address
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We, the abovesigned, being legally registered voters of the Town of Atkinson, hereby join with the unanimous recommendation of the Atkinson Conservation Commission and petition the Board of Selectmen to place the following Warrant Article on the Town Warrant for the March, 2006 Atkinson Town Meeting:

WETLANDS ZONING AMENDMENT

- Whereas, the current Wetlands Zoning ordinance has served Atkinson well, by protecting our natural wetlands and preventing overly dense development around them; and
- Whereas, the definition of "wetland" in the current zoning ordinance does not match with the now mandated definition used by the State of New Hampshire, and we now run the very real risk of losing buffer zone protections around some of our wetland resources unless we change our ordinance to adopt the State-mandated definition; and
- Whereas, we feel that for a few "ecologically significant" wetlands, the current 100 ft. buffer zone rule is inadequate, and so require a buffer zone increase to 150 ft. for these special wetlands; and
- Whereas, the current buffer rule is not specific enough about what can and cannot be done in the wetland buffer - while it keeps structures away from wetlands, it allows for the construction of roads and driveways right up to the edge of a wetland, thus suggesting the need for a natural vegetative buffer around wetland resources as well as the establishment of specific criteria for the construction of accessory structures and other constructed site improvements in the wetland buffer; and
- Whereas, the "one size fits all" buffer rule has often proven to be inflexible, and has resulted in a much higher than average number of variance applications to the Zoning Board of Adjustment, thus suggesting the need for an ordinance under which existing homeowners

Section 410. WETLANDS CONSERVATION DISTRICT ZONING

may apply for a Special Exception in order to make reasonable improvements to their homes and properties which abut wetlands with a minimum of regulatory red tape;

We therefore ask:

Are you in favor of the adoption of an amendment to the Town Zoning Ordinance which would include the repeal of the present wetlands ordinance (Section 410. WETLANDS ZONING) and would replace it with a new ordinance?

The technical revisions are as follows:

a) to add the following definitions to **SECTION 300: DEFINITIONS:**

Constructed Site Improvement: Any modification of the topography or soil of a site which alters the surface configuration of the land, including but not limited to, the construction of roads, driveways, parking lots, patios, swimming pools, drainage ways and impoundments, and embankment retaining walls.

Ecologically Significant Wetlands: Ecologically significant wetlands are wetlands of significant value that are designated by the Town of Atkinson as worthy of extra protection because of their functional values, uniqueness, fragility and/or unspoiled character.

Intermittent streams: Streams that flow for sufficient time to develop and maintain a defined channel, but which might not flow during dry portions of the year.

Surface waters: Areas which have standing or flowing water at or on the surface of the ground. This includes but is not limited to rivers, streams, lakes, and ponds.

Wetland buffer: Wetland buffer refers to the upland areas adjacent to wetland resources in the Wetlands Conservation District. Wetland buffers are applied irrespective of lot lines and municipal boundaries, except that buffers are not applied to properties directly across the right of way of a Town Class V or better roadway, or a State or Federal highway, existing at the time of acceptance of Section 410.

Wetland resources: Includes most wetlands, surface waters, and intermittent streams. However, wetland conditions resulting from the following are specifically excluded from this definition: constructed drainage structures including, but not limited to: swales, ditches, and basins; actively-maintained man-made ponds; and septage lagoons.

b) to delete the current definition **W1 WETLANDS** in Section 300 and replace it with the following definition in order to bring the Town Zoning Ordinance into compliance with NH RSA 674:55:

Wetland: 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 soil conditions.

c) to delete **Section 410. WETLANDS ZONING** in its entirety; and

d) to replace Section 410 with the following language:

Section 410. WETLANDS CONSERVATION DISTRICT ZONING

410:1 Purpose and Intent

The purpose of the Wetlands Conservation District is to protect the public health, safety and general welfare of the community by controlling and guiding the use of land areas defined as wetland resources and buffer areas around those resources. It is intended that this Section shall:

- a. Prevent the development of structures and land uses on and around naturally occurring wetland resources which will contribute to pollution of surface and groundwater by wastewater or regulated substances or sedimentation;
- b. Prevent the destruction of, or significant changes to, natural wetland resources which provide flood protection, provide filtration of water flowing into ponds and streams, augment stream flow during dry periods and are connected to the ground or surface water supply;
- c. Protect wildlife habitats, maintain ecological values and support other public purposes such as those cited in RSA 482-A:1;
- d. Protect potential water supplies and existing aquifers (water bearing stratum) and aquifer recharge areas, as noted in the *Town of Atkinson Water Resource Management and Protection Plan*, prepared in 1991 by the Rockingham Planning Commission;
- e. Prevent unnecessary or excessive expense to the Town for the purpose of providing and/or maintaining essential services and utilities which might be required as a result of development in and/or around wetland resources;
- f. Prevent damage to structures and properties caused by inappropriate development in wetland resources.

410:2 Area of Jurisdiction

- a. District Composition: The Wetlands Conservation District comprises:
 - 1) The Ecologically Significant Wetlands listed in the table in Subsection 410:10 and the land within 150 feet of the edge of said wetlands.
 - 2) Surface waters (such as lakes, ponds, and streams) and the land within 100 feet of the mean high water level of said surface waters.
 - 3) All other wetland resource areas and the land within 100 feet of the edge of said resources.
- b. Delineation Requirements: When the precise location of a wetland resource boundary in any particular case is required to be known, it shall be determined by on-site inspection of soils, vegetation, and hydrology by a New Hampshire Certified wetland scientist.
- c. Boundary Appeals: If, while exercising their duties in the enforcement of this ordinance, an applicable Town official or Board questions the validity of the boundaries of a wetland resource area on a specific parcel of land, that official or Board may call upon the services of a New Hampshire Certified wetland scientist in order to examine said area and report the findings to the Planning Board for a site specific determination of the boundary. Testing procedures that are necessary to resolve boundary appeals shall be conducted at the expense of the landowner.

410:3 Permitted Uses in Wetland Resources

The following uses shall be permitted in wetland resources within the Wetlands Conservation District provided that the proposed use will not cause any reduction of value of a wetland that would result in the significant net loss of any of the functional values set forth in RSA 482-A:1 and in the *New Hampshire Code of Administrative Rules* Chapter Wt 700 Prime Wetlands:

- a. Wildlife habitat development and management.
- b. Recreational uses consistent with the purpose and intent of this Section as stated in Subsection 410:1.
- c. The construction and maintenance of trails, provided that (1) all required permits are obtained from the New Hampshire Department of Environmental Services (DES) Wetlands Bureau, and (2) all work is done in compliance with the procedures currently cited in *Best Management Practices for Erosion Control During Trail Maintenance and Construction*, published by the NH Dept. of Resources & Economic Development's (DRED) Division of Parks and Recreation Bureau of Trails.
- d. Forestry and tree farming to include the construction of access roads for said purpose. All work shall be in compliance with the provisions of RSA 227-J, and with procedures currently cited in *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire*, published by the NH Dept. of Resources & Economic Development's (DRED) Division of Forests and Lands.
- e. Water impoundments constructed for the enhancement of a wetland resource area and/or the construction of well water supplies, in compliance with permits required by the New Hampshire Department of Environmental Services (DES) Water Resources Division and Water Supply and Pollution Control.
- f. Agricultural uses, provided that such use is shown not to cause significant increases in surface or groundwater contamination by pesticides or other toxic or hazardous substances and that such use will not cause or contribute to soil erosion. Best management practices as defined by the NH Department of Agriculture shall be followed.
- g. Any use otherwise permitted by this ordinance that is compatible with the purposes stated in Subsection 410:1 and that does not involve the erection of a structure or that does not alter the surface configuration of the land by the addition of fill or by dredging.

410:4 Conditional Uses in Wetlands Resources

In wetland resources other than Ecologically Significant Wetlands, a conditional permit may be obtained as part of subdivision and/or site plan approval or, if not applicable, a special exception may be obtained from the Zoning Board of Adjustment for the following uses or alterations, subject to the conditions below:

- a. Construction of roads and other access ways and for pipelines, power lines, and other transmission lines
- b. Construction of drainage ways to include streams, creeks, or other paths of normal runoff water and common agricultural land drainage.

Conditions for Wetland Resource Use and/or Alteration:

- a. The proposed construction is essential to the productive use of land not within the Wetlands Conservation District.

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- b. Design and construction methods will be such as to minimize impact upon the wetland resource and will include restoration of the site consistent with the permitted use.
- c. Drainage work shall be in accordance with best management practices and specifications stated in the 1992 publication entitled *Stormwater Management and Erosion and Sedimentation Control for Urban and Developing Areas in New Hampshire*, NH DES and RCCD.
- d. There is no feasible alternative route on land controlled by the applicant that does not cross the Wetlands Conservation District nor has less detrimental impact on the wetland resource. Nothing in this Section shall limit the applicant from exploring alternatives with abutting property owners.
- e. Economic advantage is not the sole reason for the proposed location of the construction.

Dredge and Fill Permits:

- a. Prior to filing an application for a New Hampshire Department of Environmental Services (DES) dredge and fill permit, the applicant is strongly encouraged to meet with the Conservation Commission to ensure that the proposed dredge and fill is consistent with the intent of the ordinance.
- b. An approved New Hampshire DES dredge and fill permit, once acted upon, may change the Wetlands Conservation District Boundary, which will be applied from the new edge of wetland.

410:5 Wetland Buffer Provisions

The following provisions define restrictions on land uses and activities allowed within wetland buffers within the Wetlands Conservation District:

- a. Vegetative Buffers: In order to protect the integrity and functionality of the adjacent wetland resources, a vegetative buffer, consisting of a healthy, well-distributed stand of trees, saplings, shrubs and/or ground cover shall be maintained as follows:

Wetland Resource	Size of Vegetative Buffer
Ecologically Significant Wetlands	50 Feet
All other wetland resources	25 Feet

- b. Pesticide and fertilizer use: The use of pesticides and manufactured fertilizers shall be prohibited within the required vegetative buffer.
- c. Accessory structures: No structures shall be constructed within or encroach upon any wetland buffer, except that the erection of accessory structures shall be permitted, provided such structures:
 - 1) are outside the required vegetative buffer
 - 2) are free standing from the principal building on the site
 - 3) are constructed in accordance with the local building code
 - 4) are uninhabited
 - 5) do not discharge animal or human waste
 - 6) taken together, cover no more than five (5) percent of the total surface area of the wetland buffer contained on the lot.

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- d. Constructed site improvements: Constructed site improvements (as defined in Section 300) shall be permitted within the wetland buffer area provided that:
 - 1) the required vegetative buffer is maintained
 - 2) the improvements are carried out in a manner which is consistent with the purpose and intent of this Section as stated in Subsection 410:1.
- e. Subsurface wastewater disposal systems: No subsurface wastewater disposal system shall be constructed within 100 feet of the edge of any wetland resource.
- f. Erosion Control: All construction, forestry, and agricultural activities within the wetland buffer shall be undertaken with special care to avoid soil erosion and siltation of wetland resources. The Planning Board, pursuant to its subdivision and site plan review authority, may require an erosion control plan approved by the Rockingham County Conservation District for any project undertaken upgradient of a wetland resource.

410:6 Conditional Uses in Wetlands Buffers

A special exception may be granted by the Zoning Board of Adjustment for the following uses or alterations in the Wetlands Conservation District, subject to the conditions below:

- a. Expansion of structures lawfully existing at the time of adoption of this Section to within no less than 50 feet of any wetland resource.
- b. Construction of a new structure on a lot lawfully existing at the time of adoption of this Section to within 100 feet of any Ecologically Significant Wetland.

Conditions for Wetland Buffer Reduction:

- a. The structure or expansion for which the exception is sought cannot feasibly, after consideration of all reasonable alternatives, be constructed on a portion or portions of the lot which lie outside the Wetlands Conservation district;
 - or -
 - the application of the Wetlands Conservation district eliminates greater than 50 percent of the buildable area located on the lot.
- b. The maximum building coverage in the wetland buffer shall be no greater than 25 percent of the total surface area of the wetland buffer contained on the lot.
- c. Design and construction methods must be such as to ensure the structure's drainage will not adversely impact any wetland resources and will be consistent with the purpose and intent of this Section.

410:7 Lot Size Determinations

Areas designated as wetland resources under this ordinance may not be used to satisfy minimum lot size requirements or other density limitations required by the zoning ordinance and subdivision regulations except where soil-based lot size determination is specifically allowed for minimum lot sizing.

410:8 Overlay Zoning

The Wetlands Conservation District is an overlay district. In all cases where the Wetlands Conservation District is super-imposed over another zoning district in the Town of Atkinson, that district whose regulations are the more restrictive shall apply.

410:9 Remedy for Violations

Any person or persons who violate the provisions of this Section shall be liable for administrative fines and/or remediation or restoration of the resource(s) affected as provided for in New Hampshire State Statutes and Administrative Rules.

410:10 Ecologically Significant Wetlands

Wetland Name	Description
Hall Farm Pond	10+/- acre wetland located south of NH Rte. 111 and north of Hall Farm Road, primarily on Tax Map 16, Lot 9.
Hog Hill Brook	17.5+/- acre wetland which extends southeast of Island Pond Road, located primarily on Tax Map 20, Lot 7 and extending onto Tax Map 16, Lot 64 and Tax Map 21, Lot 1.
Stewart Farm Pond	21+/- acre wetland located due west of Stewart Farm Road and northeast of Village Drive, primarily on Tax Map 12, Lot 1.
West Sawmill Swamp	121+/- acre wetland extending across the northern Atkinson border with Hampstead and located directly west of upper Maple Avenue, on Tax Map 18.
East Sawmill Swamp	58+/- acre wetland located directly east of upper Maple Avenue, on Tax Map 19.
Wright Farm Pond	46+/- acre wetland bordered by Sawmill Road, Summit Drive, Walker Road, Merrill Drive, Meeting Rock Drive, and Bittersweet Lane, primarily on Tax Map 13, Lot 96.
Bryant Brook	69+/- acre wetland located on the southern border between Atkinson and Plaistow, primarily on Tax Map 10, Lot 7, and extending onto Tax Map 9, Lot 62-22 and Tax Map 5, Lot 48.

Note: The wetlands listed here were evaluated by procedures described in Method for the Comparative Evaluation of Non-Tidal Wetlands in New Hampshire, published by the New Hampshire Department of Environmental Services (1991). Details of the analysis may be found in Town of Atkinson Prime Wetland Study, prepared by Natural Resource Consulting Services, dated December 2002 and on file in the office of the Atkinson Planning Board.