

ARTICLE XIII WETLAND CONSERVATION OVERLAY DISTRICT

175-58. Purpose of the Wetland Conservation Overlay District.

The Wetland Conservation Overlay District (WCOD) is an overlay district intended to protect the quality and functioning of wetlands throughout the Town by managing the use of the wetland and the upland buffer adjacent to the wetland in coordination with the state dredge and fill permit system. The provisions of this article are intended to:

- A. Protect the water quality of wetlands by appropriately managing stormwater runoff, siltation and sedimentation, and the construction or alteration of allowed or pre-existing buildings and structures;
- B. Minimize flooding and flood damage by preserving the flood storage capacity of wetlands;
- C. Protect wildlife and fisheries habitats and wetlands vegetation;
- D. Maintain stream flow and groundwater recharge;
- E. Conserve natural beauty and scenic quality; and
- F. Limit uses of the wetland and upland buffer to those that are consistent with the objectives listed in A-E

175-59. Applicability.

- A. The provisions of the WCOD shall apply to the following areas of the Town of Durham:
 - 1. All wetlands except:
 - a. isolated, non-tidal wetlands with a contiguous surface area of less than 3,000 square feet that are not vernal pools and are not associated with any surface water, natural drainage way, or other wetland, and
 - b. wetlands associated with currently functioning and maintained, non-abandoned, manmade:
 - ditches and swales,
 - sedimentation and/or detention basins or ponds,
 - agricultural and irrigation ponds and swales, and
 - fire ponds, cisterns, and related facilities.
 - 2. An upland buffer strip adjacent to each wetland subject to the provisions of this district as identified in 1. above. The width of the upland buffer strip from the reference line of the wetland shall vary with the type of wetland as follows:
 - a. bogs, prime wetlands, and rare and exemplary wetland communities: 150 feet
 - b. all tidal wetlands (other than those in a.): 100 feet
 - c. vernal pools: 100 feet
 - d. all other non-tidal wetlands
 - in the R and RC Zones: 100 feet
 - in all other zones: 75 feet

- B. Wetlands are defined in 175-7 and shall be delineated by a state certified wetlands scientist on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology, in accordance with the techniques outlined in the Army Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1 (January 1987), as amended. The hydric soils component of the delineation shall be determined in accordance with Field Indicators for Identifying Hydric Soils in New England (Version 2, July 1998), published by the New England Water Pollution Control Commission, as amended.
- C. The provisions of this article apply in addition to any state requirements for a dredge and fill permit or other state approval or permit. It is the intention of the Town that these provisions be coordinated with state requirements and standards but that these standards shall govern if they are more stringent than state standards. (NOTE: It is the responsibility of the property owner/applicant to consult with the New Hampshire Department of Environmental Services to obtain all required permits for any ground disturbance in wetlands.)

175-60. Permitted Uses in the WCOD.

- A. Notwithstanding the uses permitted in the underlying zoning district, the following uses shall be allowed without a permit in the WCOD provided that they do not alter the surface condition or configuration of the land by the addition of fill, do not obstruct or alter the natural flow or infiltration of surface water, and comply with the regulations of WCOD:
 - 1. The planting of native or naturalized species and wetland vegetation as identified in “The United States Fish and Wildlife Service National List of Plant Species that Occur in Wetlands: New Hampshire” within a wetland and native or non-native, non-invasive vegetation in the upland buffer in conjunction with the landscaping of lot;
 - 2. The installation and observation of monitoring wells;
 - 3. Conservation activities;
 - 4. Accessory agriculture subject to the performance standards of 175-65.C;
 - 5. The removal of dead, diseased, unsafe, or fallen trees;
 - 6. The maintenance of existing vegetation including shrubs, lawns, and fields except as provided in 175-65.A.
 - 7. Forestry in accordance with Performance Standard 175-65.D.
 - 8. A pier or dock, including the replacement or expansion of an existing pier or dock, provided the structure is approved by the appropriate state agency (Otherwise it is considered a conditional use).
 - 9. The maintenance of an existing pier or dock.
 - 10. A solar-energy system mounted on a building, where the building is pre-existing or otherwise approved (separate from the solar-energy system).
- B. The following uses and activities, including any necessary grading, shall be permitted in the WCOD only if they are permitted in the underlying zoning district and the Planning Board determines that: 1.) appropriate erosion control measures will be used, 2.) any disturbed area will be restored, and 3.) the activity will be conducted in a manner that minimizes any impact on the wetland. The Planning Board shall not take final action on an application until the application has been presented to the Conservation Commission and the Conservation Commission has offered its comments/recommendations.

1. The installation of private water supply wells serving a use on the lot;
2. Water impoundments with a surface area of less than 10,000 square feet;
3. The installation of culverts or rock fords for existing driveways or woods roads in uplands and wetlands that are non-tidal, and are not vernal pools, prime wetlands, or rare and exemplary wetlands where the wetland impact is less than 3,000 square feet;
4. Temporary crossings for the maintenance of utility pipes or lines or for other utility structures;
5. Temporary coffer dams associated with the repair or replacement of existing structures;
6. The repair or replacement of existing retaining walls;
7. Decks with an area of less than 200 square feet provided that they are raised above the ground in such a manner as to permit the natural flow of any surface water;
8. The control of aquatic weeds by harvesting;
9. The control of exotic weeds in accordance with RSA 487:17;
10. The construction of nature trails and paths.
11. Grading of the site where grading within the WCOD is necessary to accommodate a structure located outside of the WCOD.
12. Aquaculture.

175-61. Conditional Uses in the WCOD.

- A. The following uses, including any necessary grading, shall be permitted as conditional uses in the WCOD provided that the use is allowed in the underlying zoning district and the Planning Board determines that the criteria in 175-61. B., below, are met. The Planning Board shall not take final action on an application until the application has been presented to the Conservation Commission and the Conservation Commission has offered its comments/recommendations.
 1. The construction of streets, roads, driveways, access ways (but not including any parking areas other than those serving single-family uses), bridge crossings, and utilities including pipelines, power lines, and transmission lines;
 2. Commercial agriculture and plant nurseries within the upland buffer strip subject to the performance standards of 175-65.C;
 3. The construction of a non-residential building within the upland buffer strip in a core commercial or research/industry zoning district;
 4. Accessory structures and buildings other than those allowed as permitted uses;
 5. Outdoor recreational facilities that do not require the construction of buildings or structures.
- B. The Planning Board shall approve a Conditional Use Permit for a use in the WCOD only if it finds that all four of the following criteria have been met in addition to the general criteria for conditional uses and any performance standards for the particular use:
 1. There is no alternative design and location on the parcel for the proposed project that would:
 - a. have less adverse impact on the WCOD and overall ecological values;
 - b. be workable; and

- c. be reasonable to expect the applicant to utilize.
 - 2. The design, construction, maintenance and operation of the proposed structures and activities within the wetland and buffer will minimize soil disturbance and adverse impacts to water quality to the extent workable.
 - 3. Mitigation and restoration activities of the area being disturbed will allow for the site to perform the functions of the wetland and buffer to the extent workable. Planting of native or naturalized vegetation shall be included as appropriate (See Section 175-60 A. 1. for reference).
 - 4. The proposed project will not have substantial adverse impacts to known rare species, rare habitats, water quality, aquatic connectivity, or wildlife corridors. Applicants are not required to provide supporting documentation for this criterion unless the Planning Board has good reason to believe this criterion applies.
- C. Ecological value is defined as the environmental functions performed by all lands and waters to support the variety of habitats and the abundance and diversity of all flora and fauna.

175-62. Prohibited Uses in the WCOD.

Any use that is not identified as a permitted use in 175-60 or a conditional use in 175-61 shall be a prohibited use. Freestanding solar energy systems are prohibited in the WCOD.

Notwithstanding this limitation, the erection of a structure or septic system on an existing lot within the Wetland Conservation Overlay District may be permitted by special exception in accordance with the provisions and standards of 175-29.B.

175-63. Coordination with Other Districts

All land within the WCOD is also subject to the provisions of an underlying zone. Where there is conflict among the provisions of the WCOD, any other applicable overlay district, and the underlying district, the most stringent or restrictive provision shall apply.

175-64. Use of Wetlands in Calculating Lot Area and Density

No areas of surface water, wetlands or areas designated as very poorly drained, poorly drained, or somewhat poorly drained soil located within the WCOD may be used to satisfy minimum lot sizes or the minimum usable area per dwelling unit requirement.

175-65. Performance Standards in the WCOD.

All buildings and structures shall be erected, altered, enlarged, or moved and all land within (or in the case of septic setbacks, below, to proximity to) the WCOD shall be used in accordance with the following performance standards:

A. *Naturally Vegetated Buffer Strip*

A naturally vegetated buffer strip meeting the requirements of 175-75.1 of the Shoreland Protection Overlay District shall be maintained from the reference line of each wetland to the upland limit of the WCOD. Where existing buildings or structures or other site considerations preclude the maintenance of a vegetated buffer for the full width of the

upland portion of the WCOD, a buffer of the maximum possible width as set forth in 175-75.1 shall be provided. No soil disturbance shall occur within 50 feet of the reference line. Existing lawns within the upland buffer may be allowed to remain provided that a 25-foot wide strip adjacent to the reference line of the wetland is not mowed and is allowed to reestablish naturally occurring vegetation. The application of fertilizers, pesticides, or herbicides within the buffer strip shall be prohibited except in conjunction with allowed agricultural activities.

B. *Sedimentation and Erosion Control*

All activities and the use of buildings, structures, and land within the WCOD shall be designed and operated to minimize the volume and rate of stormwater runoff, the amount of erosion, and the export of sediment from the site. All activities shall be conducted in accordance with Town standards for stormwater management and Best Management Practices (BMPs) for stormwater management including but not limited to:

1. Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials, NHDES, January 2004
2. Stormwater Management and Erosion and Sediment Control for Urban and Developing Areas in New Hampshire, NHDES, 1992
3. Best Management Practice for Urban Stormwater Runoff, NHDES, 1996
4. Innovative Stormwater Treatment Technologies Best Management Practices Manual, NHDES, 2002

C. *Agricultural Activity*

No soil disturbance, manure spreading, or mowing in conjunction with either commercial agriculture or accessory agricultural activities shall occur within the wetland or within 75 feet of the reference line of the wetland. Commercial agriculture within the WCOD (except for aquaculture when approved under 175-60B and by the appropriate state agency) shall be conducted in accordance with a management plan approved by the Strafford County Resource Conservation District as demonstrating Best Management Practices as set forth in “Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire” 2017, as amended (New Hampshire Department of Agriculture) and “Best Management Wetlands Practices for Agriculture,” as amended (New Hampshire Department of Agriculture)

D. *Forestry*

Any forestry activity-within the WCOD shall be in accordance with the Basal Area Law RSA 227-J:9 and shall use as guidance for best forest management practices “New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations” Department of Resources and Economic Development and University of New Hampshire Cooperative Extension 2016, as amended; Best Management Practices for Forestry: Protecting New Hampshire’s Water Quality 2005 as amended; and “Good Forestry in the Granite State” (DRED).

E. *Trails*

Trails within the WCOD shall be constructed and maintained in accordance with Best Management Practices as set forth in “Best Management Practices for Erosion Control During Trail Maintenance and Construction” (DRED 1994). The use of trails within the WCOD shall be limited to non-motorized activities except when the trail is snow covered.

F. *Septic Setbacks*

Any new septic system, leach field, or other sewage disposal system shall be set back 125 feet from the reference line of the wetland or as provided for in 175-139, whichever is greater.

The replacement of an existing septic system, leach field, or other sewage disposal system that is located within the required setback from the reference line of the wetland shall comply with the required setback unless the Health Officer/Zoning Administrator/Code Enforcement Officer determines that such a location is not physically possible due to the shape or size of the lot and soil conditions. If the Health Officer/Zoning Administrator/Code Enforcement Officer determines that a replacement system must be located within the required wetland septic system setback, the system shall be located to provide the maximum setback possible as determined by the Health Officer/Zoning Administrator/Code Enforcement Officer and shall employ the best available technology.

175-66. Challenge to the Classification of Wetlands.

If the classification of an area as a wetland or not as a wetland or the location of the reference line 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 Administrator. The Zoning Administrator shall engage a state certified wetlands scientist to review the wetland delineation. If the wetlands scientist determines that there is uncertainty as to the classification of an area as a wetland or the location of the reference line, the Zoning Administrator may authorize the wetlands scientist to conduct an on-site investigation. The wetlands scientist shall present evidence in written form to the Zoning Administrator, which evidence shall form the basis for the final decision. The cost for the review of the classification shall be borne by the challenger unless the Planning Board determines that the review is in the greater public interest and the cost should therefore be borne by the Town.

175-67. Responsibility for Restoration of Altered Wetlands.

Any wetland altered in violation of this article shall be restored at the expense of the violator(s), as provided by RSA 483-A:5.

175-68. Local Authority and Variances.

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.