



TOWN OF DURHAM

8 Newmarket Road
Durham, NH 03824
Tel: 603-868-5571
Fax: 603-868-1858
www.ci.durham.nh.us

NOTICE: Although members of the Town Council will be meeting in the Council chambers, the Council meetings are still available for members of the public to participate via Zoom or in-person.

DURHAM TOWN COUNCIL
MONDAY, DECEMBER 15, 2025
DURHAM TOWN HALL – COUNCIL CHAMBERS
6:00 PM

IAW RSA 91-A:2 I(b): Consultation with legal counsel regarding the SZ Durham Apartments LLC abatement settlement and the T-Mobile Lease Agreement

NOTE: *This meeting is not open to the public.*

AGENDA
DURHAM TOWN COUNCIL
MONDAY, DECEMBER 15, 2025
DURHAM TOWN HALL – COUNCIL CHAMBERS
7:00 PM

NOTE: *The Town of Durham requires 48 hours notice if special communication aids are needed.*

- I. Call to Order
- II. Town Council grants permission for fewer than a majority of Councilors to participate remotely
- III. Roll Call of Members. Those members participating remotely state why it is not reasonably practical for them to attend the meeting in person
- IV. Approval of Agenda
- V. Special Announcements
- VI. Approval of Minutes – December 1, 2025
- VII. Report from the UNH Student Senate External Affairs Chair or Designee
- VIII. Public Comments (*) – **Please state your name and address before speaking**

- IX. Unanimous Consent Agenda** *(Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote)*
- A. Shall the Town Council, upon Recommendation of the Town Assessor and Administrator, Approve FY2026 Property Tax Abatements at the Local Level or for Outstanding Appeals Before the New Hampshire Superior Court For Tax Years 2023 and 2024, Totaling \$460,318.44?
 - B. Shall the Town Council adopt **Resolution #2025-21** approving a new site lease agreement with T-Mobile Northeast LLC for 100 Durham Point Road and authorize the Administrator to sign all relevant documents?
 - C. Shall the Town Council, Upon Recommendation of the Administrator, Award a Contract to T-Ford Construction of Georgetown MA in an amount not to exceed \$1,517,099 for Construction Improvements of the Phase 2 Wagon Hill Farm Living Shoreline Project?
 - D. Shall the Town Council, Upon Recommendation of the Administrator, Award a Contract to Streamworks of Madbury, NH in an amount not to exceed \$461,570 for Engineering Services, Monitoring and Inspection Related to the Phase 2 Wagon Hill Farm Living Shoreline Project?
 - E. Shall the Town Council provide its advice and consent to the Administrator for the changing of all construction related permit fees and placement of said fees in the Town-wide Master Fee Schedule?
 - F. Shall the Town Council Adopt **Resolution #2025-22** approving the Administrator's proposed FY 2026 Operating, Capital, and Special Fund Budgets, and the 2026-2035 Capital Improvement Plan, as amended.
- X. Committee Appointments**
- XI. Presentation Items**
Presentation by Dwight Trueblood and Neil Slepian on the Conservation Commission's work on making changes to the Wetland Conservation and Shoreland Protection Overlay District Ordinances.
- XII. Unfinished Business**
- XIII. Councilor and Town Administrator Roundtable**
- XIV. New Business**
- XV. Nonpublic Session (if required)**
- XVI. Adjourn (NLT 10:30 PM)**

<p>(*) <i>The public comment portion of the Council meeting is to allow members of the public to address matters of public concern regarding town government for up to 5 minutes. Obscene, violent, disruptive, disorderly comments, or those likely to induce violence, disruption or disorder, are not permitted and will not be tolerated. Complaints regarding Town staff should be directed to the Administrator.</i></p>
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AGENDA ITEM: #6

DATE: December 15, 2025

COUNCIL COMMUNICATION

INITIATED BY: Durham Town Council

AGENDA ITEM: **APPROVE THE TOWN COUNCIL MEETING MINUTES FOR
DECEMBER 1, 2025.**

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd Selig, Administrator

AGENDA DESCRIPTION:

Attached for the Council's review and approval are the minutes for the meeting held on December 1, 2025. Please call or email Karen Edwards with any grammatical/spelling changes prior to the meeting. Discussion at Monday evening's meeting should be limited only to substantive changes.

LEGAL AUTHORITY:

RSA 91-A:2 (II) specifies what must be contained in minutes of public meetings:

"Minutes of all such meetings, including names of members, persons appearing before the bodies or agencies, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection not more than 5 business days after the public meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of anybody or agency, or any subordinate body thereof, without exception."

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby approve the Town Council meeting minutes for December 1, 2025. (as presented /as amended)



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AGENDA ITEM: **#9A** *TS*

DATE: December 15, 2025

COUNCIL COMMUNICATION

INITIATED BY: Darcy Freer, Assessor

AGENDA ITEM: SHALL THE TOWN COUNCIL, UPON RECOMMENDATION OF THE TOWN ASSESSOR AND ADMINISTRATOR, APPROVE FY2026 PROPERTY TAX ABATEMENTS AT THE LOCAL LEVEL OR FOR OUTSTANDING APPEALS BEFORE THE NEW HAMPSHIRE SUPERIOR COURT FOR TAX YEARS 2023 AND 2024, TOTALING \$460,318.44?

CC PREPARED BY: Darcy Freer, Assessor

CC PRESENTED BY: Todd Selig, Town Administrator
Darcy Freer, Assessor

AGENDA DESCRIPTION:

Each year the Town receives requests for property tax abatements. The Assessor's Office reviews these requests and meets with the property owners or tax representatives who request a meeting. These meetings are held on an ongoing basis. Once these meetings conclude, the Assessor reviews the requests in more detail and formulates recommendations. If the taxpayer has appealed their assessment with the municipality and is dissatisfied with the decision of the Town, they may appeal the abatement to either the New Hampshire Board of Tax and Land Appeals (BTLA) or Superior Court, but not both. The following taxpayers have appealed to the Superior Court.

Below for the Council's review and information is the abatement recommendation to settle local level abatement and Superior Court appeal for the following property:

SZ Durham Apartments LLC – 259 Mast Road

Recommendation: GRANT (for Tax Year(s) 2023 & 2024). At this time, the Assessor recommends granting the abatement request in the amount of \$460,318.44 including interest, calculated until January 9, 2026, to settle outstanding local level abatements and Superior Court appeals. See separate Superior Court Settlement Recommendation from the assessor outlining the reasons for granting this request.

LEGAL AUTHORITY:

RSA 76:16 describes the process for the apportionment, assessment, and abatement of property taxes.

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

The Town has recommended the inclusion of \$1,105,000 in the 2026 budget, to be funded through the undesignated fund balance, for abatements related to student housing.

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby, upon Recommendation of the Town Assessor and Administrator, Approve FY2026 Property Tax Abatements at the Local Level or for Outstanding Appeals Before the New Hampshire Superior Court For Tax Years 2023 and 2024, Totaling \$460,318.44.

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of [REDACTED], 2025, between SZ Durham Apartments LLC (the “Taxpayer”) and the Town of Durham, New Hampshire (the “Town”) (collectively, the “Parties”).

Whereas, the Taxpayer believes that its property located within the Town known as Parcel 210-10, located at 259 Mast Road (the “Subject Property”), is excessively and disproportionately valued;

Whereas, the Taxpayer has challenged the Town’s valuation of the Subject Property for the property tax year beginning April 1, 2023 by filing a petition in Strafford Superior Court for abatement of taxes assessed (Docket No. 219-2024-CV-00409) (the “Tax Year 2023 Litigation”);

Whereas, the Taxpayer has challenged the Town’s valuation of the Subject Property for the property tax year beginning April 1, 2024 by filing a petition in Strafford Superior Court for abatement of taxes assessed (Docket No. 219-2025-CV-00371) (the “Tax Year 2024 Litigation”);

Whereas, the Town disputes that the Subject Property is excessively and disproportionately valued, and disputes the Taxpayer’s entitlement to abatements of the subject tax years;

Whereas, the Taxpayer and the Town desire to settle and resolve the Litigation and to avoid additional disputes regarding the property tax assessment for the Subject Property for the property tax years beginning April 1, 2025 and subsequent property tax years, until the next town-wide revaluation; and

NOW, THEREFORE, the Taxpayer and the Town agree to settle and resolve the disputes among them as follows:

1. Abatements and Avoidance of Future Disputes

A. For purposes of assessing ad valorem property taxes, the fair market value of the Subject Property for both the April 1, 2023 property tax year and the April 1, 2024 property tax year shall be \$50,000,000. The median equalization ratio for the Town for the April 1, 2023 property tax year as determined by the Department of Revenue Administration is 94.2% and this equalization ratio will be applied to the fair market value of the Subject Property to set its assessed value for the April 1, 2023 property tax year at \$47,100,000. The median equalization ratio for the Town for the April 1, 2024 property tax year as determined by the Department of Revenue Administration is 82.5% and this equalization ratio will be applied to the fair market value of the Subject Property to set its assessed value for the April 1, 2024 property tax year at \$41,250,000.

B. The agreed assessed values stated in Section 1(A) above result in a tax

abatement for the April 1, 2024 property tax year of \$276,262.00 plus interest at the statutory rate, and a tax abatement for the April 1, 2023 property tax year of \$158,495.00 plus interest at the statutory rate. The abatements for the April 1, 2023 property tax year and for the April 1, 2024 property tax year shall collectively be referred to as the "Tax Refund." The Town shall issue the Tax Refund in the manner set forth in Section 2.

C. For purposes of assessing ad valorem property taxes, the assessed value of the Subject Property for the April 1, 2025 property tax year shall be \$49,000,000, and that assessed value shall remain unchanged for each property tax year following the April 1, 2025 property tax year until the property tax year in which the Town implements a revaluation of all real estate pursuant to N.H. RSA 75:8-a (the "Townwide Revaluation"). However, the occurrence of any event identified in N.H. RSA 75:8, II before the Townwide Revaluation shall allow the Town to adjust the assessment of the Subject Property to reflect the applicable event or events set forth in RSA 75:8, II.

D. Taxpayer will not seek an abatement for the April 1, 2025 property tax year or any subsequent tax year before the Townwide Revaluation unless the Town adjusts the assessment of the Subject Property pursuant to RSA 75:8, II.

E. The Town shall not owe or be responsible for any further interest, costs, fees, or expenses except as expressly set forth in this Agreement.

2. Refund

The Tax Refund shall be paid to Taxpayer within thirty (30) days of the full execution of this agreement by the Parties. The Tax Refund shall be made payable to SZ Durham Apartments LLC and mailed to:

Patricia Crupi
Ryan
One International Place
100 Oliver Street, Suite 1840
Boston, MA 02110

3. Disposition of the Litigation

Within ten (10) days after full execution of this Agreement, the Taxpayer shall dismiss the Tax Year 2023 Litigation and the Tax Year 2024 Litigation with prejudice and without costs.

In executing this Agreement, the Taxpayer forever waives and releases the Town with regard to all causes of action, liabilities, damages, injuries, or other claims, whether known or unknown, whether arising at law or at equity, that the Taxpayer has, has had, or may have against the Town related to the Town's assessment or taxation of the Subject Property for the April 1, 2023 tax year, April 1, 2024 tax year, or April 1, 2025 tax year.

4. No Admissions

This Agreement is intended solely to resolve the Tax Year 2023 Litigation, Tax Year 2024 Litigation, and disputes regarding the ad valorem property tax liability of the Subject Property in each property tax year until the next Townwide Revaluation. Nothing in this Agreement is intended to be or shall constitute an admission by either party for any purpose whatsoever, and this Agreement shall not be used by any party or any other person as evidence in any other matter or proceeding, including any proceeding regarding property tax years after April 1, 2025, except that this Agreement may be used as evidence in any suit or proceeding to enforce the terms of this Agreement.

5. Miscellaneous Provisions

Each of the Parties represents and warrants that it has full power and authority to enter into and execute this Agreement and that all applicable laws, ordinances, rules and procedures have been satisfied in the approval and execution of this Agreement.

This Agreement may not be changed, altered, modified or waived except by written amendment entered into by the Parties or their successors-in-interest.

This Agreement shall be binding on the Parties' successors and assigns.

The Parties acknowledge that this Agreement constitutes a full, final and complete settlement of their differences with regard to the subject matter hereof and supersedes any and all other written or oral communications or understandings between or among them related hereto.

The Parties further acknowledge that this Agreement may be executed in counterparts.

This Agreement shall be governed by the laws of the State of New Hampshire, without regard to its choice of law principles.

This Agreement is EXECUTED by the undersigned, duly authorized representatives of the Parties.

Dated _____, 2025

SZ DURHAM APARTMENTS LLC

By: _____

Printed name:

Title:

Dated _____, 2025

TOWN OF DURHAM

By: _____

Printed name:

Title:

Dated _____, 2025

By: _____

Printed name:

Title:

Dated _____, 2025

By: _____

Printed name:

Title:

DRAFT



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AGENDA ITEM: **# 9B** *TS*

DATE: December 15, 2025

COUNCIL COMMUNICATION

INITIATED BY: Todd Selig, Administrator

AGENDA ITEM: **SHALL THE TOWN COUNCIL ADOPT RESOLUTION #2025-21 APPROVING A NEW SITE LEASE AGREEMENT WITH T-MOBILE NORTHEAST LLC FOR 100 DURHAM POINT ROAD AND AUTHORIZE THE ADMINISTRATOR TO SIGN ALL RELEVANT DOCUMENTS?**

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd Selig, Administrator

AGENDA DESCRIPTION:

On January 1, 1999 the Town signed a personal wireless facility site agreement with Sprint Spectrum L.P. to allow the placement of a personal wireless equipment and antenna on town property at 100 Durham Point Road. In 2020 Sprint and T-Mobile merged to form one company under the name T-Mobile. The lease agreement with Sprint expired on January 19, 2024, and T-Mobile has continued to operate at the location while a new lease was being drafted.

The new lease agreement with T-Mobile Northeast LLC include an initial term of five years. This initial term of five years shall automatically renew for three successive renewal terms of five years each, unless T-Mobile provides the Town of Durham with notice of intention not to renew not less than six months prior to the expiration of the current term.

LEGAL AUTHORITY:

Telecommunications Act of 1996

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

According to the new lease agreement, rent payments will be \$3,200 per month for a total of \$38,400 for the first year. Rent for each successive year following the first anniversary of the lease date shall be increased by an amount equal to 2% of the rent. Below is an approximate calculation of each years' rent.

Year	Monthly Rent	Yearly Rent
1	\$3,200.00	\$38,400.00
2	\$3,264.00	\$39,168.00
3	\$3,329.28	\$39,951.36
4	\$3,395.87	\$40,750.44
5	\$3,463.79	\$41,565.48

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Town of Durham does hereby Adopt Resolution #2025-21 Approving a new Site Lease Agreement with T-Mobile Northeast LLC for 100 Durham Point Road and authorize the Administrator to sign all relevant documents.

RESOLUTION #2025-21 OF DURHAM, NEW HAMPSHIRE

A RESOLUTION TO APPROVE THE NEW SITE LEASE AGREEMENT WITH T-MOBILE NORTHEAST LLC FOR 100 DURHAM POINT ROAD AND AUTHORIZE THE ADMINISTRATOR TO SIGN ALL RELEVANT DOCUMENTS.

WHEREAS, the Durham Town Council acts as the legislative and governing body of the Town of Durham and has charge and control over property owned by the Town; and

WHEREAS, the Telecommunications Act of 1996 states that a municipality may not exclude or act in a way that has the effect of excluding the provision of personal wireless services and the siting of wireless telecommunications facilities within the Town; and

WHEREAS, the Town Council has determined as a matter of public policy that there are important advantages to the siting of wireless telecommunications facilities on municipally owned land; and

WHEREAS, on January 1, 1999 the Town of Durham entered into a Site Agreement which leased land at 100 Durham Point Road to Sprint Spectrum L.P. for a personal wireless facility; and

WHEREAS, in 2020 T-Mobile and Sprint merged into one company ; and

WHEREAS, the lease agreement with Sprint expired on January 19, 2024 and T-Mobile has continued to operate on a month-to-month basis at the location under the terms of the prior lease; and

WHEREAS, the new lease will be with T-Mobile Northeast LLC with an initial term of five years; and

WHEREAS, the initial term of five years shall automatically renew for three successive renewal terms of five years each unless T-Mobile provides the Town of Durham with notice of intention not to renew not less than six months prior to the expiration of the current term.

NOW, THEREFORE BE IT RESOLVED that the Durham Town Council, the governing body of the Town of Durham, New Hampshire, hereby adopts **Resolution #2025-21** approving a new site lease agreement with T-Mobile Northeast LLC for 100 Durham Point Road and authorizes the Administrator to sign all relevant documents.

PASSED AND ADOPTED this 15th day of December, 2025 by a two-thirds majority vote of the Durham Town Council with _____ voting in favor, voting against, and _____ abstaining.

Joe Friedman, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk-Tax Collector

SITE LEASE AGREEMENT

This **SITE LEASE AGREEMENT** (this “**Lease**”) is effective the date of the last signature on this Lease (the “**Effective Date**”) by and between the Town of Durham, NH, with an address at 8 Newmarket Road, Durham, NH 03824 (“**Landlord**”) and T-Mobile Northeast LLC, a Delaware limited liability company, having an address of 12920 SE 38th Street, Bellevue, WA 98006 (“**Tenant**”) (collectively, the “**Parties**”).

Landlord and Tenant agree to the following:

1. Property Description. Landlord is the owner of the real property located at 100 Durham Point Road, Durham, NH, as further described on **Exhibit A** (the “**Property**”). The Property includes the premises which is comprised of approximately 2,112 square feet plus any additional portions of the Property which Tenant may require for the use and operation of its facilities as generally described on **Exhibit B** (the “**Premises**”). Tenant reserves the right to update the description of the Premises on **Exhibit B** to reflect any modifications or changes. Tenant shall have the right to alter, replace, expand, enhance and upgrade the Antenna Facilities at any time during the term of this Lease, provided that any material modifications to the Premises are subject to the approval of the Landlord, provided that Tenant is not required to obtain Landlord approval for routine maintenance and replacement of equipment with substantially similar equipment.

2. TERMINATION OF PRIOR LEASE. Landlord and Tenant acknowledge that space at the Premises was previously leased between Landlord and Tenant’s affiliate, Sprint Spectrum L.P., a Delaware limited liability company (“**Sprint**”), under the terms and conditions of that certain PCS Site Agreement dated January 1, 1999, as may have been amended (collectively, the “**Prior Lease**”). The Prior Lease expired by its terms on January 19, 2024, and Sprint has continued to operate on a month to month basis at the Premises under the terms of the Prior Lease with Landlord’s consent. Landlord and Tenant acknowledge and agree that the Prior Lease shall terminate effective as of 11:59:59 pm on the day immediately prior to the Commencement Date of this Agreement (“**Prior Lease Termination Date**”) as if such date were originally stated to be the termination date of the Prior Lease and shall thereafter be replaced in its entirety by this Lease. The termination of the Prior Lease shall be effective without further documentation. As the Prior Lease expired on January 19, 2024, the Tenant is considered an at-will tenant. Any rental payments made while an at-will tenant are credited to the corresponding month prior to the receipt of said payment. Any such payment made deems the Tenant in good standing. Presuming the Tenant is in good standing for all months since the expiration of the Prior Lease, no further funds are due and payable, and any and all payments made under this Lease are for the rental period contemplated herein.

3. Antenna Facilities and Permitted Uses. Tenant leases the Premises for its equipment, personal property and improvements associated with Tenant’s wireless communications business (the “**Antenna Facilities**”). The Parties acknowledge that the Antenna Facilities were installed by Tenant under a prior agreement between the Parties and this Lease replaces any and all prior agreements. The Premises may be used for the construction, installation, operation, maintenance, repair, addition, modification, upgrading, removal or replacement of any

and all Antenna Facilities (the “**Permitted Uses**”) for no fee or additional consideration, subject to all Governmental Approvals, as defined below. The Antenna Facilities shall remain the exclusive property of Tenant and shall not be considered fixtures. Tenant, at its expense, may use any and all reasonable means as Tenant deems necessary to control, secure or restrict access to the Antenna Facilities, but the Tenant may not restrict the Landlord’s access to any area the Landlord is entitled to access. Landlord hereby waives any and all lien rights it may have concerning the Antenna Facilities, exclusive of real estate tax liens. Landlord shall cooperate with Tenant’s due diligence activities, which is limited to providing the access to the Property for inspections, testing, permitting related to the Permitted Uses and with Tenant’s effort to obtain and maintain any necessary zoning, land use and other local and state permits required for the Permitted Use (collectively, the “**Government Approvals**”) or utility services in connection with the project contemplated hereby. This cooperation is limited to the Landlord providing access to allow for process necessary to gain/maintain the Government Approvals, access needed for utility services, and the affirmative acknowledgement that the Tenant has a legal right to occupy the Premises. No further cooperation is required. The use of the terms “property” and “fixtures” herein is for identification purposes only, and any such term has no bearing on the determination of what constitutes taxable property.

4. Lease Term.

a) The initial term of the Lease shall be five (5) years (“**Initial Term**”), commencing on the Rent Commencement Date, as defined in Section 4 below. The Initial Term shall terminate on the day immediately preceding the fifth (5th) anniversary of the Rent Commencement Date. The Initial Term, together with any Renewal Terms are referred to collectively as the “**Term**.”

b) The Initial Term shall automatically renew for three (3) successive renewal terms of five (5) years each (each a “**Renewal Term**”), unless Tenant provides the Landlord with notice of intention not to renew not less than six (6) months prior to the expiration of the then current Term, and unless the Landlord provides the Tenant with notice of intention not to renew not less than six (6) months prior to the expiration of the current Term.

5. Rent/Other Charges.

a) Commencing on the first day of the calendar month following the Effective Date (the “**Rent Commencement Date**”), Tenant shall pay the Landlord rent in the amount of Three Thousand Two Hundred and 00/100 Dollars (\$3,200.00) per month, (the “**Rent**”). Tenant shall deliver Rent to the Landlord at the address specified in the amended Notices section below, or by electronic payment. Rent shall be payable by the fifth (5th) day of each calendar month for the entirety of the Term. The Rent for each successive year following the first anniversary of the Rent Commencement Date shall be increased by an amount equal to two percent (2%) of the Rent for the immediately preceding year. If this Lease is terminated at a time other than on the last day of the month, Rent shall be prorated as of the date of termination for any reason (other than default by Tenant) and all prepaid Rent shall be immediately refunded to Tenant.

b) Landlord shall supply the Tenant with a list of any available electronic payment platforms that the Landlord accepts in its ordinary course of business. Tenant may condition payment of Rent and any other sums payable under this Lease upon Tenant's receipt of a duly completed IRS form W-9, or similar governmental form.

c) Any charges payable under this Lease other than Rent shall be billed by Landlord to Tenant within three (3) years from the date the charges were incurred or due; otherwise the charges shall be deemed time-barred and forever waived and released by Landlord. Additionally, if it is determined by Tenant that Tenant overpaid Landlord for any charges due under the Lease, Tenant is permitted, upon written notice to Landlord, to deduct any such overpayment from Rent amounts due under this Lease.

6. Interference. Tenant shall not interfere with the radio frequency communications of Landlord or any of Landlord's existing tenants as of the Effective Date. After the Effective Date, Landlord shall not install, or permit any third party to install, any equipment or structures that interfere with or restrict the operations of Tenant. Any such interference shall be deemed a material breach of this Lease by Landlord and Landlord shall remove the cause of the interference within twenty-four (24) hours of notice, or as soon thereafter as reasonably practicable. Tenant shall have the right to exercise all legal and equitable rights and remedies to end the interference.

7. Utility Services.

a) Tenant shall have the right to connect to, maintain, repair, upgrade, remove or replace existing utility related equipment and shall have the right to install new utility related equipment, including a generator, optical fiber facilities, and alternative energy related equipment, to service its Antenna Facilities, or cell-on-wheels ("COW") on the Property (collectively, the "**Utility Facilities**").

b) Tenant shall be responsible for all utilities charges for electricity, or any other utility service used by Tenant on the Premises.

8. Access and Licenses.

a) Landlord shall furnish, at no additional charge to Tenant, unimpeded and secure access to the Premises on a 24-hours-a-day, 7-days-a-week basis to Tenant and Tenant's employees, agents, contractors and other designees, upon 48 hours' notice, or in the event of an emergency as soon as practicable.

b) Landlord grants Tenant, at no additional Rent or charge, licenses on, over, under and across the Property for ingress, egress, communications, power and other utilities, construction, demolition and access to the Premises and any Utility Facilities (collectively, the "**Licenses**"). Landlord shall not modify, interrupt or interfere with any communications, electricity, or other utility equipment and licenses serving the Property, except with the prior written approval of Tenant.

9. Termination. Either party may terminate this Lease without further liability, upon thirty (30) days prior written notice to the other party, for any of the following reasons: (i) changes

in local or state laws or regulations which adversely affect a party's ability to effectuate the purposes of this Lease inclusive of operation of the equipment on the Premises; (ii) a Federal Communications Commission ("FCC") ruling or regulation that is beyond the control of either party; or (iii) if Tenant is unable to obtain any Governmental Approval required for the construction or operation of Tenant's Antenna Facilities; or (iv) a default as contemplated in Section 11 below, and all cure periods have expired.

Landlord may terminate this Lease upon no less than eighteen (18) months' prior written notice to Tenant, only if Landlord (i) intends to repurpose the Property in a manner that necessitates the removal of the existing tower on which Tenant's Facilities are located, and (ii) Landlord and Tenant have reasonably determined in good faith that no feasible alternative location exists on the Property for Tenant's Facilities. For purposes of this section, "repurpose" shall mean any redevelopment, demolition, or conversion of the Property that materially prevents Tenant from operating its Facilities as currently conducted under this Lease.

Tenant may Terminate this Lease upon ninety (90) days prior written notice to Landlord, provided Tenant pays Landlord a termination fee equal to the remaining Rent payments of the then current Term. Within ninety (90) days after termination of this Lease, Tenant, at its cost and expense, shall remove its equipment and will restore the Premises to substantially the original condition prior to the installation of Tenant's Antenna Facilities, reasonable wear and tear, damage by the elements, fire or other casualty, takings by eminent domain and damage properly attributable to the Landlord excepted. The Tenant shall continue to pay Rent at the preceding year's rate for any time beyond the termination that the Antenna Facilities are allowed to remain.

10. Casualty and Condemnation. If the Premises or Antenna Facilities are damaged or destroyed by wind, fire or other casualty, Tenant shall be entitled to negotiate, compromise, receive and retain all proceeds of Tenant's insurance and other claims, , and Tenant may terminate the Lease by written notice to Landlord. If the Premises, any Licenses or Antenna Facilities are taken or condemned by power of eminent domain or other governmental taking, exclusive of any adverse judicial ruling or legislated policy change, then: (a) Tenant shall be entitled to negotiate, compromise, receive and retain all awards attributable to (i) the Antenna Facilities, (ii) Tenant's leasehold interest in the Property, (iii) any moving or relocation benefit available to Tenant and (iv) any other award available to Tenant that is not attributable to Landlord's title to or interest in the Property; all monetary relief against the Landlord is limited to the total of the then remaining Rent due for the Term. If the Antenna Facilities are not operational due to casualty or condemnation, Tenant shall have the right to abate the Rent for that period time, unless Tenant locates a COW, or other temporary antenna facility on the Property. Tenant may locate a COW, or other temporary antenna facility upon discovery of the lack of operation of the Antenna Facility or may, for this cause, terminate the Lease by thirty (30) days' written notice to Landlord.

11. Default and Right to Cure.

a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if

Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant, at the sole determination of the Landlord. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity, including Landlord's right to terminate this Lease with thirty (30) days' notice.

b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) failure to provide access to the Premises or to cure an interference problem within twenty-four (24) hours or as soon thereafter is reasonably practicable after receipt of written notice of such default; or (ii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant upon satisfactory evidence of such expenditure is produced to the Landlord, and/or (ii) any and all other rights available to it under law and equity.

12. Taxes. In accordance with RSA 72:8-a, Telecommunications Poles and Conduit, all structures, poles, towers, and conduits employed in the transmission of telecommunication, cable, or commercial mobile radio services shall be taxed as real estate. Additionally, the underlying land and land rights shall be taxed as real estate, as is consistent with the Town of Durham's revaluation manual.

13. Insurance and Subrogation and Indemnification.

a) During the Term, Tenant and Landlord each shall maintain Commercial General Liability Insurance in amounts of One Million and no/100 Dollars (\$1,000,000.00) per occurrence and Two Million and no/100 Dollars (\$2,000,000.00) aggregate. Each Party may satisfy this requirement by obtaining the appropriate endorsement to any master insurance policy such Party may maintain. Tenant and Landlord shall each maintain "all risk" or "special causes of loss" property insurance on a replacement cost basis for their respectively owned real or personal property.

b) Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of an insured loss, neither Party's insurance company shall have a subrogated claim against the other Party.

c) Subject to the property insurance waivers set forth in the preceding subsection (b), Landlord and Tenant each agree to indemnify and hold harmless the other Party from and against any and all administrative and judicial actions and rulings, claims, causes of action,

demands and liabilities, including reasonable attorneys' fees, to the extent caused by or arising out of: (i) any negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying Party, its employees or agents, or (ii) any breach of any obligation of the indemnifying Party under this Lease. The indemnifying Party's obligations under this subsection are contingent upon its receiving prompt written notice of any event giving rise to an obligation to indemnify the other Party and the indemnified Party's granting it the right to control the defense and settlement of the same.

d) Tenant shall not be responsible or liable to Landlord or any third party for any claims, damages, costs, expenses, including liens, fines, penalties or other enforcement actions, attributable to any pre-existing violations of applicable laws, codes, ordinances or other regulations relating to the Property (collectively, "**Pre-Existing Violations**"). To the extent Tenant is or may be required to cure such Pre-Existing Violations in order to obtain any Governmental Approvals for its Permitted Uses of the Premises, however, Tenant shall have the right, but not the obligation, to cure such Pre-Existing Violations and deduct the curative costs from Rent payable under this Lease.

e) The provisions of subsections (b) and (c) above shall survive the expiration or termination of this Lease.

14. Notices. All notices, requests, demands and other communications shall be in writing and shall be effective three (3) business days after deposit in the U.S. mail, certified, return receipt requested or upon receipt if personally delivered or sent via nationally recognized courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other Party.

If to Tenant, to:

T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Lease
Compliance/4BSS018A

If to Landlord, to:

Town of Durham, NH
8 Newmarket Road
Durham, NH 03824

Per the W-9 Form Rent is to be paid to:
(to be filled in by Landlord)

15. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants that: (a) Landlord has full right, power and authority to execute and perform this Lease and to grant Tenant the leasehold interest and Licenses contemplated under this Lease; (b) Landlord has good and unencumbered title to the Property, free and clear of any liens or Mortgages (defined below) which will interfere with Tenant's Permitted Uses and any rights under this Lease; (c) the execution and performance of this Lease shall not violate any laws, ordinances, covenants, or the provisions of any Mortgage, lease, or other agreement binding on Landlord; (d) Tenant's use and quiet

enjoyment of the Premises will not be disturbed; and (e) Landlord will be responsible, at its sole cost and expense, for maintaining all portions of the Property in good order and condition and in compliance with all applicable laws, including without limitation and as applicable, the roof, any support structure owned by Landlord, HVAC, plumbing, elevators, landscaping and common areas, excluding the Premises.

16. Environmental Laws. Landlord and Tenant shall comply with all federal, state and local laws in connection with any substances brought onto the Property from the Rent Commencement date forward, that are identified by any law, ordinance or regulation as hazardous, toxic or dangerous (collectively, the “**Hazardous Substances**”). Tenant agrees to be responsible for all losses or damage caused by any Hazardous Substances that it may bring onto the Property and will indemnify Landlord for all such losses or damages. Landlord represents that it has no knowledge of any Hazardous Substances on the Property, however as this is a landfill, it makes no guarantees as to the status of hazardous materials on-site. Notwithstanding anything herein to the contrary, Tenant shall have no liability or obligation hereunder for any Hazardous Substances at the Property due to any person or entity outside the control of Tenant.

17. Assignment.

a) Tenant shall have the right to assign, sublease or otherwise transfer this Lease with Landlord’s prior consent, which shall not be unreasonably withheld, conditioned or delayed; provided however, that Tenant may assign or sublet all or any part of its interest in the Lease without Landlord’s consent to any entity which: (i) is a parent, subsidiary, or affiliate of Tenant or Tenant’s parent; (ii) is the successor or surviving entity resulting from a merger or other plan of reorganization with Tenant; or, (iii) acquires more than fifty percent (50%) of an ownership interest in Tenant. Upon an assignment or transfer, Tenant shall be relieved of all liabilities and obligations and Landlord shall look solely to the transferee for performance under this Lease. Upon receipt of a written request from Tenant, Landlord shall promptly execute an estoppel certificate.

b) Landlord shall have the right to assign and transfer this Lease only to a successor owner of the Property. Only upon Tenant’s receipt of written verification of a sale, or transfer of the Property shall Landlord be relieved of all liabilities and obligations and Tenant shall look solely to the new landlord for performance under this Lease. Until Tenant receives required information and documents, Tenant shall not be responsible for any failure to make payments under this Lease and reserves the right to hold payments due under this Lease. Landlord shall not attempt to assign, or otherwise transfer this Lease separate from a transfer of ownership of the Property (the “**Severance Transaction**”), without the prior written consent of Tenant, which consent may be withheld or conditioned in Tenant’s sole discretion.

18. Relocation.

a) Landlord must provide Tenant at least six (6) months written notice of any repairs, maintenance or other work (the “**Work**”) during the Term of the Lease which would require the temporary relocation of the Antenna Facilities, except in the case of an emergency, in which case Landlord shall provide as much notice as reasonably possible. Landlord agrees that the Work will not interfere with or alter the quality of the services provided by the Antenna Facilities. If necessary, in Tenant’s sole determination, Tenant may elect to install a temporary communications facility (e.g. a “cell on wheels,” or “COW”) in another mutually agreeable location on the Property that provides Tenant coverage and service levels similar to those of the Antenna Facilities at the original location, while the Work is being performed. Tenant shall have the right to reinstall its Antenna Facilities immediately upon the completion of the Work. Tenant

or its designee shall have the right to accompany Landlord, its agents or contractors whenever the Work is being performed on the Premises. Notwithstanding anything to the contrary, Landlord shall not have the right to permanently relocate the Antenna Facilities except as set forth herein.

b) If Landlord desires to redevelop, modify, remodel, or in any way alter its Property or any improvements thereon ("Redevelopment"), Landlord shall in good faith use its best efforts to fully accommodate Tenant's continuing use of the Premises. If both parties to this Lease determine that the Redevelopment necessitates permanent relocation of the Antenna Facilities, Landlord shall have the right, subject to the following provisions of this section, to relocate the Antenna Facilities, or any part thereof, to an alternate location on the Property (the "**Relocation Premises**"), provided, however, that: (i) Landlord may only relocate Tenant once during each renewal term; (ii) Landlord may only relocate Tenant after the Initial Term; (iii) Landlord must give Tenant at least six (6) months' written notice prior to such relocation; (iv) such relocation shall be performed exclusively by Tenant or its agents and such relocation shall not delay the Landlord's Redevelopment; and (v) such relocation shall not limit or interfere with Tenant's use of the Premises. Thereafter, the Tenant has no right of access to the former Premises. Landlord shall exercise its relocation right by delivering written notice to Tenant pursuant to the Lease and shall identify in the notice the proposed Relocation Premises on the Property. Upon the relocation, the parties shall enter in an addendum to this Lease, defining the Relocation Premises, and subject to the other terms of this Lease remaining in full force and effect.

19. Marking and Lighting Requirements. If any tower or other support structure for Tenant's Antenna Facilities is owned by Landlord, Landlord acknowledges that Landlord shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration and the FCC. Landlord shall indemnify and hold Tenant harmless from any fines or other liabilities caused by Landlord's failure to comply with these requirements.

20. Miscellaneous.

a) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements with respect to the subject matter and Property. Any amendments to this Lease must be in writing and executed by both parties.

b) Landlord agrees to cooperate with Tenant in executing any documents which Tenant deems necessary to insure and protect Tenant's rights in, or use of, the Premises. Landlord shall execute and deliver: (i) a Memorandum of Lease in substantially the form attached as Exhibit C; and (ii) if the Property is encumbered by a deed, mortgage or other security interest (each, a "**Mortgage**"), the Landlord shall execute a subordination, non-disturbance and attornment agreement using Tenant's form.

c) This Lease shall be construed in accordance with the laws of the state or territory in which the Property is located, without regard to the principles of conflicts of law. If any claim is adjudicated under this Lease, such claims shall be brought to the Stafford County Superior Court.

d) If any term of this Lease is found to be void or invalid, the remaining terms of this Lease shall continue in full force and effect. Any questions of particular interpretation shall be interpreted as to their fair meaning. Upon such determination, the parties shall attempt to

negotiate a substitute provision that accomplishes the goals of the provision struck, and do so in a manner that complies with all laws, regulations, and/or orders of a court of competent jurisdiction.

e) Each Party hereby represents and warrants to the other that this Lease has been duly authorized, executed and delivered by it, and that no consent or approval is required by any lender or other person or entity, inclusive of Sprint, in connection with the execution or performance of this Lease.

f) If either Party is represented by any broker or any other leasing agent, such Party is responsible for all commission fee or other payment to such agent.

g) This Lease and the interests granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

h) This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. Signed facsimile and electronic copies of this Lease shall legally bind the parties to the same extent as original documents.

(Signatures on the following page)

LANDLORD: Town of Durham, NH

By: _____

Printed Name: _____

Title: _____

Date: _____

TENANT: T-Mobile Northeast LLC

By: _____

Printed Name: _____

Title: _____

Date: _____



T-Mobile Legal Approval

EXHIBIT A
Legal Description

Property address of 100 Durham Point Road, Durham NH 03824

The Property is legally described as follows:

A certain tract of land, situate on the Southerly side of the Durham Point Road in said Durham bounded and described as follows:

Beginning at the Northeasterly corner of land of Alice W. Kramer at the Southerly side of said Durham Point Road, thence Southerly along the Easterly boundary of said Kramer land to and along the Easterly side of land of one Jabre to an iron pipe, thence turning at an angle and running in a Westerly direction along the Southerly boundary of said Jabre land to an iron pipe in the fence line across the brook; thence turning at an angle and running in a Southerly direction along the Westerly side of said brook a distance of two hundred fifty (250) feet to an iron pin in a rock; thence turning at an angle and running in an Easterly direction three hundred fifty feet to an iron pin in the ledge, thence turning at an angle and running in a Northerly direction nine hundred (900) feet to an iron pin at the Southerly side of said road, thence turning at an angle and running in a Westerly direction one hundred fifty (150) feet along the Southerly side of said road to point of beginning.

Being a portion of the premises conveyed by Fred W. Smith, Administrator to Arthur Teeri by deed dated June 2, 1942 and recorded Strafford County Registry of Deeds Book 510, Page 432.

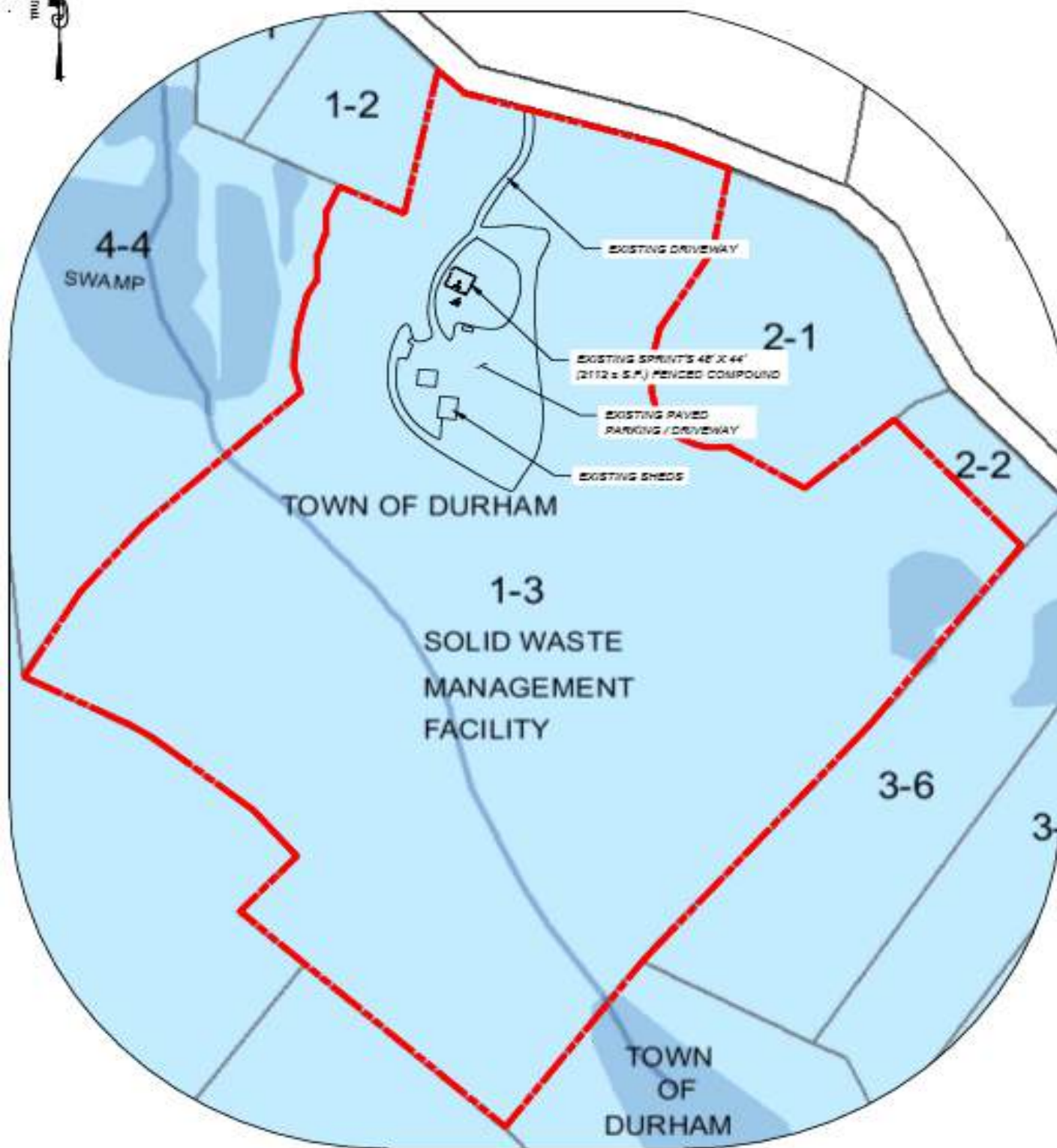
EXHIBIT B

Subject to the terms and conditions of this Lease, the location of the Premises is generally described and depicted as shown below or in the immediately following attachment(s).

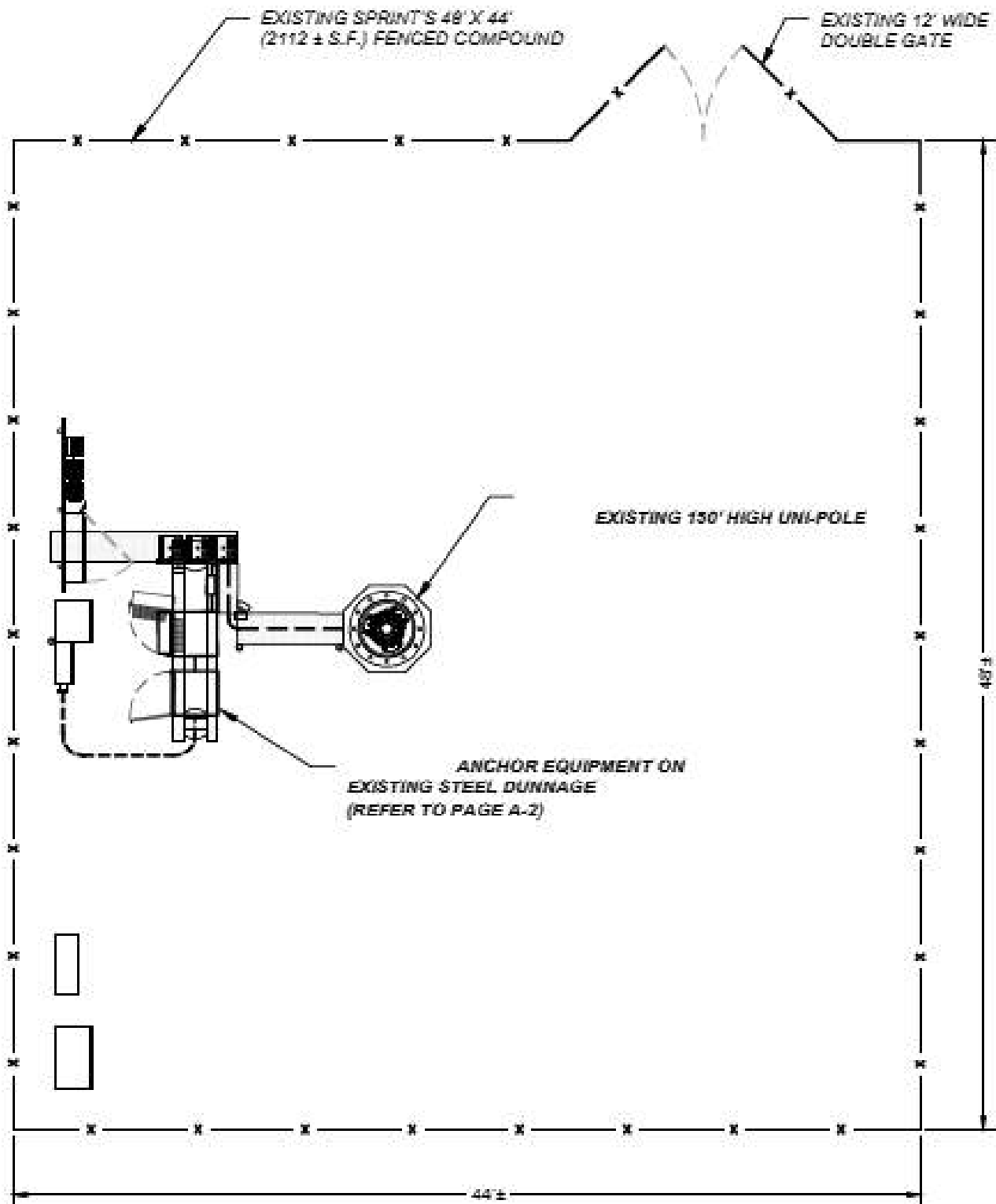
However, it is expressly agreed and understood by and between the Landlord and Tenant that the exact and precise location of the Tenant's Antenna Facilities are subject to review and approval by the planning and/or zoning Boards having jurisdiction over the Property.

Notwithstanding anything to the contrary, the specific number and type of equipment described in the Exhibit is for illustrative purposes only and in no way limits Tenant's ability to alter, replace, add to, expand, enhance, modify, supplement, replace, refurbish, relocate or upgrade any such equipment within the Premises, subject to all necessary federal, state, and/or local requirements. No such alteration, replacement, addition, expansion, enhancement, modification, supplementation, replacement, refurbishment, relocation, or upgrade shall alter the area occupied by the Premises without express consent from the Landlord.

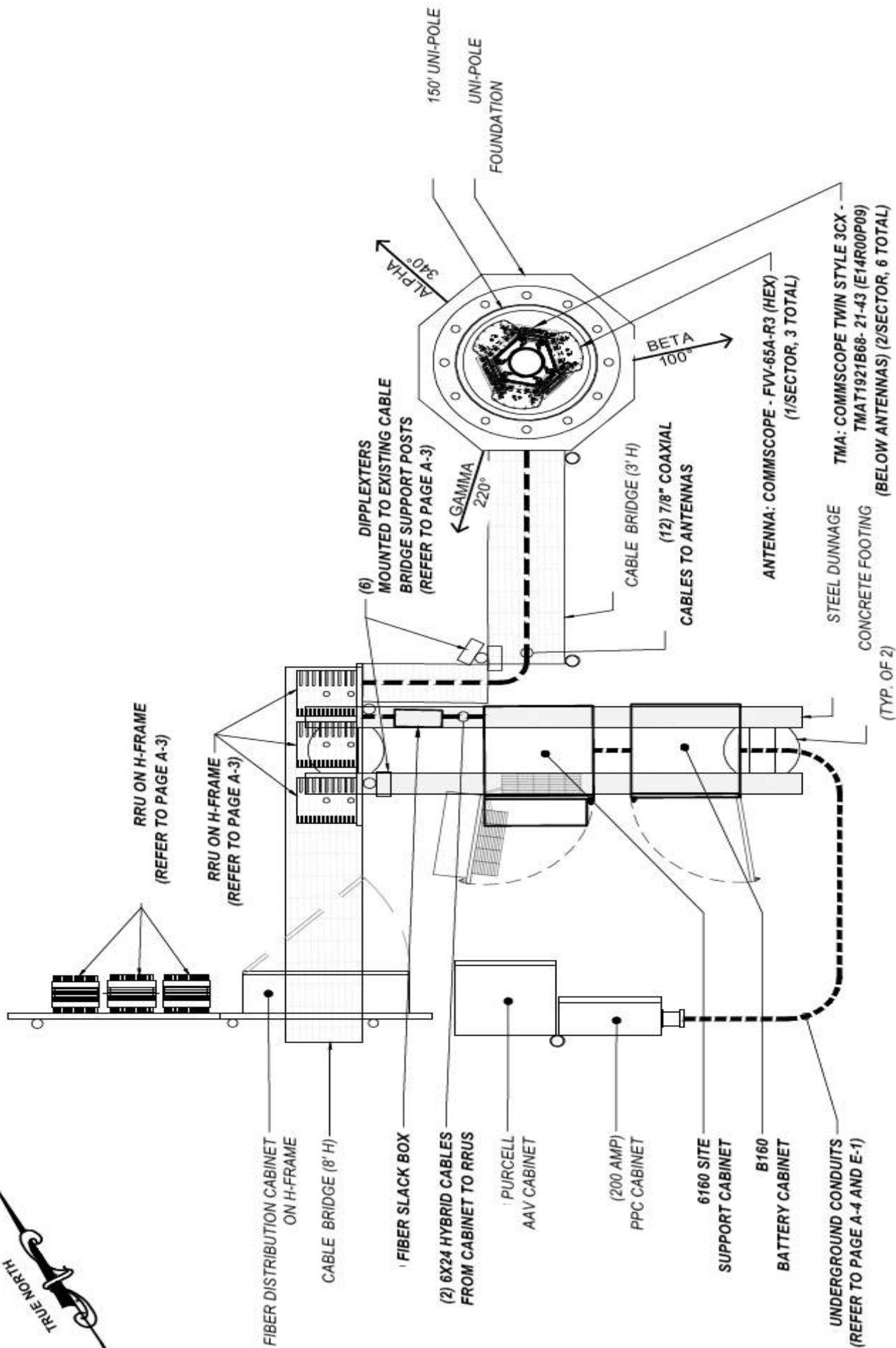
(Please see Attached)



ASSESSOR'S MAP 1
A-1
SCALE: 1" = 300'±

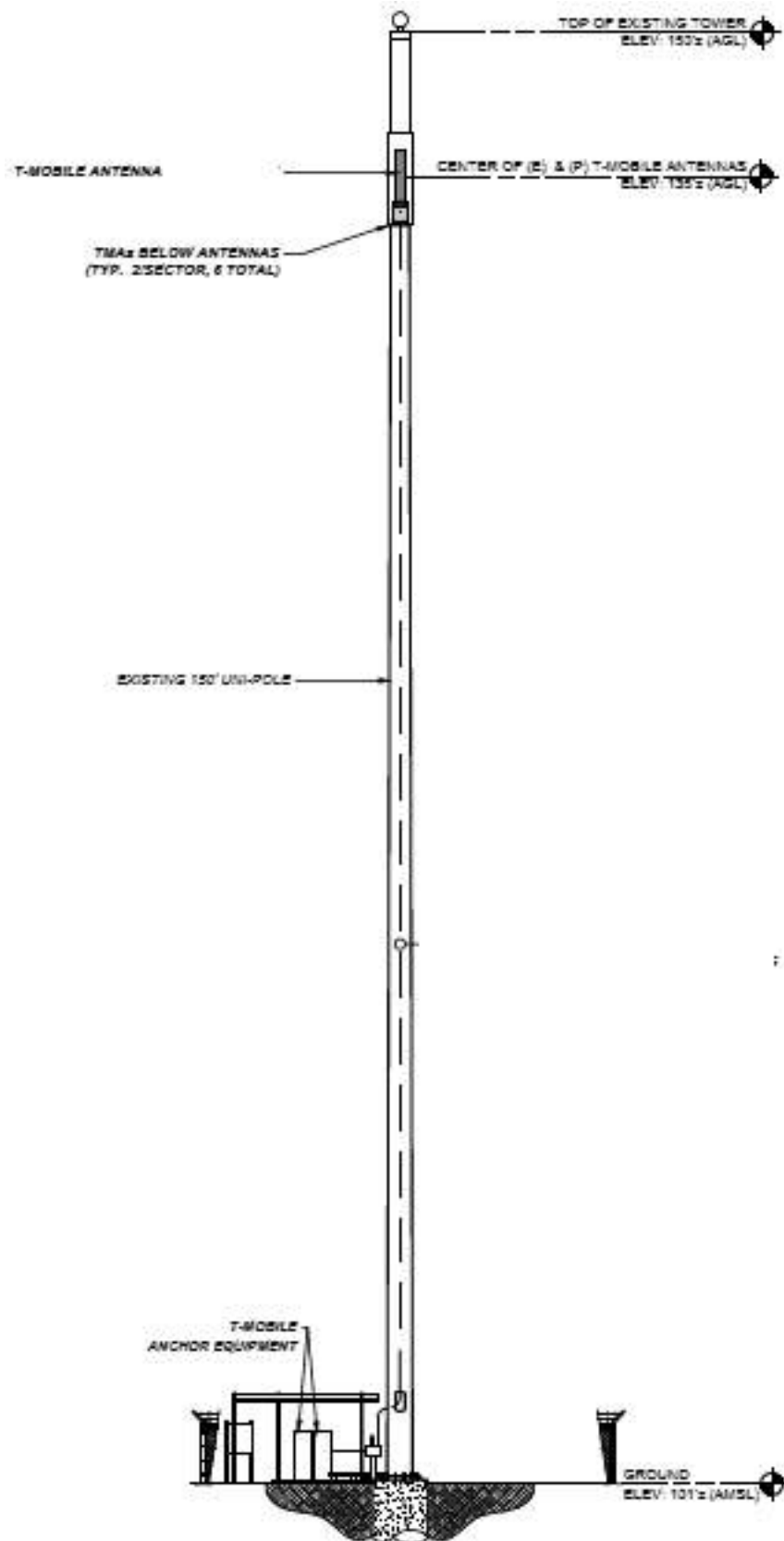


COMPOUND PLAN
SCALE: 3/32" = 1'-0"



EQUIPMENT LAYOUT

SCALE: 3/8"=1'-0"



ELEVATION
N.T.S.

EXHIBIT C

Memorandum of Lease

After Recording, Mail To:

MEMORANDUM OF LEASE

A Site Lease Agreement (the “**Lease**”) by and between the Town of Durham, NH, with an address at 8 Newmarket Road, Durham, NH 03824 (“**Landlord**”) and T-Mobile Northeast LLC, a Delaware limited liability company, having an address of 12920 SE 38th Street, Bellevue, WA 98006 (“**Tenant**”), was made regarding a portion of the following property (as more particularly described in the Lease, the “**Premises**”):

See Attached **Exhibit A** incorporated herein for all purposes.

Without limiting the terms and conditions of the Lease, Landlord and Tenant hereby acknowledge the following:

1. The initial term of the Lease shall be for five (5) years commencing on the Rent Commencement Date, as defined in the Lease.
2. Tenant shall have the right to extend the Lease for three (3) additional and successive five-year (5) terms unless Tenant provides the Landlord with notice of intention not to renew not less than six (6) months prior to the expiration of the then current Term, and unless the Landlord provides the Tenant with notice of intention not to renew not less than six (6) months prior to the expiration of the current Term.
3. This memorandum is not a complete summary of the Lease. It is being executed and recorded solely to give public record notice of the existence of the Lease with respect to the Premises.
4. Provisions in this memorandum shall not be used in interpreting the Lease provisions and in the event of conflict between this memorandum and the said unrecorded Lease, the unrecorded Lease shall control.
5. This memorandum may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument.
6. Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Lease.

(Signature page to follow.)

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last Party to sign.

LANDLORD: Town of Durham

By:

Print Name: _____

Title: _____

Date: _____

TENANT: T-Mobile Northeast LLC

By:

Print Name: _____

Title: _____

Date: _____

[Notary block for Landlord]

[Landlord Notary block for a Corporation, Partnership ,or Limited Liability Company]

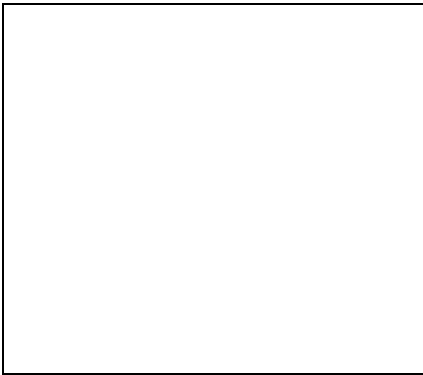
STATE OF _____)

) ss.

COUNTY OF _____)

This instrument was acknowledged before me on _____ by
_____, [title] _____ of
_____ a _____ [type of entity], on behalf of said
_____ [name of entity].

Dated: _____



Notary Public

Print Name _____

My commission expires _____

(Use this space for notary stamp/seal)

[Notary block for Tenant]

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of T-Mobile Northeast LLC, a Delaware limited liability entity to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public _____
 Print Name _____
 My commission expires _____

(Use this space for notary stamp/seal)

Memorandum of Lease - Exhibit A
Legal Description

The Property is legally described as follows:

A certain tract of land, situate on the Southerly side of the Durham Point Road in said Durham bounded and described as follows:

Beginning at the Northeasterly corner of land of Alice W. Kramer at the Southerly side of said Durham Point Road, thence Southerly along the Easterly boundary of said Kramer land to and along the Easterly side of land of one Jabre to an iron pipe, thence turning at an angle and running in a Westerly direction along the Southerly boundary of said Jabre land to an iron pipe in the fence line across the brook; thence turning at an angle and running in a Southerly direction along the Westerly side of said brook a distance of two hundred fifty (250) feet to an iron pin in a rock; thence turning at an angle and running in an Easterly direction three hundred fifty feet to an iron pin in the ledge, thence turning at an angle and running in a Northerly direction nine hundred (900) feet to an iron pin at the Southerly side of said road, thence turning at an angle and running in a Westerly direction one hundred fifty (150) feet along the Southerly side of said road to point of beginning.

Being a portion of the premises conveyed by Fred W. Smith, Administrator to Arthur Teeri by deed dated June 2, 1942 and recorded Strafford County Registry of Deeds Book 510, Page 432.



TOWN OF DURHAM

8 Newmarket Road
Durham, NH 03824
Tel: 603-868-5571
Fax: 603-868-1858
www.ci.durham.nh.us

AGENDA ITEM: **# 9C & 9D** *TS*

DATE: December 15, 2025

COUNCIL COMMUNICATION

INITIATED BY: Durham Public Works

AGENDA ITEM: SHALL THE TOWN COUNCIL, UPON RECOMMENDATION OF THE ADMINISTRATOR, AWARD A CONTRACT TO T-FORD CONSTRUCTION OF GEORGETOWN MA IN AN AMOUNT NOT TO EXCEED \$1,517,099 FOR CONSTRUCTION IMPROVEMENTS OF THE PHASE 2 WAGON HILL FARM LIVING SHORELINE PROJECT?

AND

SHALL THE TOWN COUNCIL, UPON RECOMMENDATION OF THE ADMINISTRATOR, AWARD A CONTRACT TO STREAMWORKS OF MADBURY, NH IN AN AMOUNT NOT TO EXCEED \$461,570 FOR ENGINEERING SERVICES, MONITORING AND INSPECTION RELATED TO THE PHASE 2 WAGON HILL FARM LIVING SHORELINE PROJECT?

PREPARED BY: Richard Reine, Director of Public Works

CC: Todd Selig, Administrator
Gail Jablonski, Business Manager
Sam Hewitt, Assistant Public Works Director
April Talon, Town Engineer

PRESENTED BY: Richard Reine, Director of Public Works

AGENDA DESCRIPTION:

The purpose of this Council Communication is to request the Town Council award the Construction and Engineering Services Contracts for the Wagon Hill Farm Phase 2 Living Shoreline Project. This follows a competitive bidding process for this project, where the Town received construction bids from six qualified contractors and a qualifications-based selection process was initiated for construction phase engineering and monitoring services. Previously, on Monday, April 15th, 2024, the Town Council approved a Resolution Authorizing the acceptance and expenditure of a National Fish and Wildlife Foundation (NFWF) National Coastal Resilience Fund (NCRF) Grant in the amount of \$1,994,539.00 to implement these improvements. The requested contract award totals are in alignment with the grant values and allow the Town to maximize the available grant dollars.

PROJECT BACKGROUND

The Town and its project partners have been advancing the design and permitting of this project since 2020 following receipt of additional NFWF grant funding in the amount of \$257,000 to, in part, develop preliminary designs which would extend the existing Living Shoreline at Wagon Hill Farm 1,800 feet westward. Following completion of the 2020 design effort, the Town advanced the project design to the 100% level and finalized plans and specifications. In addition, the project was issued various environmental and regulatory permits, including a NHDES wetland permit on January 15th 2025.

The proposed improvements include the construction of a Living Shoreline which will stabilize severe erosion that has occurred as depicted in the photos below and will increase the adaptive capacity of important habitat/recreation space as sea levels rise. Surveys performed in 2017 and 2023 revealed the marshes in this area are retreating between 0.15 and 1.33 feet per year, averaging 0.8 feet per year. In addition, tidal marsh has been completely lost along 25% of the project length – often due to large events like fallen trees – exposing the high banks where poor soils and few dense root mats provide little protection, leaving the banks highly vulnerable to erosion. Fish, at multiple life stages, and waterfowl will also benefit greatly from the restored ecosystem resulting from these proposed improvements. The Living Shoreline will protect valuable public property and continue to serve as an accessible example for nature-based solutions in coastal New Hampshire. The project includes the installation of fencing, similar to the Phase 1 project, with the intent of mitigating marsh trampling, while reestablishing this environmentally sensitive area. Trail and foot bridge construction, and additional viewing platforms are proposed to be installed as part of the Living Shoreline project and will continue to provide visitors to the property with access in close proximity to the waterfront.



To the West of Phase 1 Restoration Area



Wagon Hill Farm -Western Shoreline

As shown in the graphic below, upon completion, this project will stabilize up to 1,835 linear feet of tidal shoreline, restore up to 4,060 square feet of salt marsh habitat and restore up to 2,810 square feet of tidal buffer. NFWF project requirements include a monitoring period of 5 years to evaluate project success. Years 0-3 are funded through the approved NFWF grant with year 4 and 5, valued at approximately \$15,000 each, funded by the Town or other future grants.

The design approach includes a rock toe/rock slope that mimics nearby natural rocky, salt marsh shorelines and native salt marsh plantings along with natural bank stabilization in steeper eroding areas, including native transitional tidal bank-upland plantings.



Site mobilization in this densely wooded area will be challenging and have temporary impacts that will be fully restored upon project completion. The existing roadway adjacent to the historic “borrow pit” will be utilized for primary site access using ground protection such as wood cribbing, fabric and gravel/wood chips. The entrance way to the borrow pit area will be utilized for a lay down area. For safety, site access by the public will be controlled and limited during active construction. Additional trees will be removed for the equipment access lane, and this lane will ultimately be converted to an access trail for site users. Severely undercut trees at the shoreline will be removed to avoid tree fall on the project site and enable bank regrading. These trees were determined to be too severely undercut to survive any stabilization efforts. The root structures will remain in place as required by New Hampshire Shoreland rules due to the bank stabilization benefits they provided. Trees adjacent to the shoreline will be “uplift pruned” to 20-30’ to allow for sunlight penetration to the marsh area, which is a key component of the marsh restoration. Shortly after Town Council contract awards, it is anticipated that the contractor will

mobilize establishing access roads and completing tree removal while the ground is frozen and consistent with environmental permit limitations. This will result in the least impact to surrounding soils. Following this initial access and tree removal phase, the contractor will pause work until the spring of 2026. The duration of active construction is expected to take approximately 4 months during the summer of 2026. Initial site preparation and end of project cleanup and restoration are expected to last approximately 1 month each for a total of 6-8 months of construction.

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

\$1,994,539.00 programmed and approved in the Fiscal Year 2024 capital plan to be received from the National Fish and Wildlife Foundation (NFWF) National Coastal Resilience Fund (NCRF) for the construction, engineering, inspection, and monitoring of the Wagon Hill Farm Phase 2 Living Shoreline Project.

PROJECT	ACCOUNT	BUDGETED	EXPENDED/ ENCUMBERED TO DATE	REQUESTED	BALANCE
Wagon Hill Farm, Living Shoreline Phase 2 Construction – NFWF Grant	07-2475-801-36-000	\$1,994,550	\$0	\$1,517,099	\$477,451
Wagon Hill Farm, Living Shoreline Phase 2 Construction Phase Engineering Services – NFWF Grant			\$1,517,099	\$461,570	\$15,881
TOTAL REQUESTED				\$1,978,669	\$15,881

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION #1:

The Town Council Does Hereby, Upon Recommendation of the Administrator, Award A Contract to T-Ford Construction of Georgetown MA in An Amount Not to Exceed \$1,517,099 for Construction Improvements of the Phase 2 Wagon Hill Farm Living Shoreline Project and Authorizes the Administrator to Sign Associated Documents.

MOTION #2

The Town Council, Does Hereby Upon Recommendation of the Administrator, Award A Contract to Streamworks of Madbury, NH in an Amount Not to Exceed \$461,570 for Engineering Services, Monitoring and Inspection Related to the Phase 2 Wagon Hill Farm Living Shoreline Project and Authorizes the Administrator to Sign Associated Documents.



TOWN OF DURHAM

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Tel: 603-868-5571
Fax: 603-868-1858
www.ci.durham.nh.us

AGENDA ITEM: **#9E** *TS*
DATE: December 15, 2025

COUNCIL COMMUNICATION

INITIATED BY: Audrey Cline, Code Enforcement Officer/Building Inspector

AGENDA ITEM: **SHALL THE TOWN COUNCIL PROVIDE ITS ADVICE AND CONSENT TO THE ADMINISTRATOR FOR THE CHANGING OF ALL CONSTRUCTION RELATED PERMIT FEES AND PLACEMENT OF SAID FEES IN THE TOWN-WIDE MASTER FEE SCHEDULE?**

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Audrey Cline, Code Enforcement Officer/Building Inspector

AGENDA DESCRIPTION:

As the construction related permit fees have been reviewed over the years but not updated since April 2007, the Building Department undertook once again to verify Durham's fees are aligned with similar surrounding jurisdictions. They documented fees from six other communities: Newmarket, Lee, Greenland, Newington, Madbury and Stratham. They then removed the jurisdictions that calculated fees in a significantly different manner than Durham, i.e., those that use square-foot-cost or combination sq/ft/construction cost methods.

In reviewing other approaches, it was found that Durham could simplify the "math" and also review timelines for construction start, finish/CO, and permit renewal, to more reflect nearly two decades of changes in construction practices.

Code Officer Audrey Cline's recommendation is:

- Standard application fees rather than "minimum fee based on lowest value".
- Slight increase in cost per thousand for construction value for both residential and commercial.

- Removing the unique/stand alone cost per thousand for electrical, plumbing and HVAC permits.
- Add a minimum fee, in addition to the present percentage fee, for work done without an approved permit
- Extend the time for project completion under initial permit from 12 months to 18 months.
- Renewal fee after 18 months at cost/per thousand of outstanding construction yet to be completed for residential and light commercial. Large projects to be negotiated as on-going timeline could be several years.

The final fee schedule would look like this:

Application fee: Residential \$50, Commercial \$100 (up from \$25 and \$50)

Construction cost per thousand: Residential \$7, Commercial \$10 (up from \$5 and \$8)

Work without permit: Minimum \$100, Maximum 200% (change from “double” the permit cost)

The renewal fee allows for evaluation of “cost creep” in projects that we don’t presently catch but allows for typical single family dwelling completion within one permit timeframe.

LEGAL AUTHORITY:

Resolution #2017-16 of the Durham Town Council approved May 1, 2017

Allowing Any Future Updates to the Master Fee Schedule, as needed, to be by Recommendation of the Administrator With the Advice and Consent of the Town Council

LEGAL OPINION:

Not applicable.

FINANCIAL DETAILS:

The proposed change is 28% increase for residential permits and 20% increase for commercial permits. If a 20% (conservative) percentage increase is applied to 2024 permit fees collected of \$157,179, the additional fees collected would have been just over \$31,000. Additionally, the strict application of renewal fees is expected to generate a measurable increase in fees collected.

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Town Council does hereby provide its advice and consent to the Administrator for the changing of all construction related permit fees and placement of said fees in the Town-wide Master Fee Schedule.



TOWN OF DURHAM

8 Newmarket Road
Durham, NH 03824-2898

Tel: (603) 868-5571

Fax: (603) 868-5572

Master Fee Schedule (by department)

Adopted by Durham Town Council – Jan 6, 2003 (Resolution #2003-02)

Last Amended October 2, 2023

BUILDING CONSTRUCTION PERMITS AND INSPECTIONS

<u>Permit Type</u>	<u>Fee</u>	<u>Valid For</u>	<u>Authorization</u>	<u>Last Amended</u>
Building Permits-One & Two-Family Residential	Application fee of \$50 and \$7 per thousand of construction cost		Ordinance 2007-04 Administrator	12/15/25
Building Permits-Multi-Family Residential and Commercial	Application fee of \$100 and \$10 per thousand of construction cost		Ordinance 2007-04 Administrator	12/15/25
Work done without a permit	Minimum \$100, Maximum 200% of construction cost		Administrator	12/15/25
Demolition Permits-Residential & Commercial	\$50		Ordinance 2007-04	4/23/07
Electrical, Plumbing, Mechanical, Fire Suppression and Fire Detection Permits-Residential	Application fee of \$50 and \$7 per thousand of construction cost		Ordinances 2007-04, 2007-05, and 2007-06 Administrator	12/15/25
Electrical, Plumbing, Mechanical, Fire Suppression and Fire Detection Permits-Commercial	Application fee of \$100 and \$10 per thousand of construction cost		Administrator	12/15/25

<u>Permit Type</u>	<u>Fee</u>	<u>Valid For</u>	<u>Authorization</u>	<u>Last Amended</u>
Septic System Test Pit inspection, plan review and final inspection after State approval of the system.	\$100 per system		Ordinance 2007-04	4/23/07
Sign Permits (including Sidewalk Signs)	\$25 per sign		Ordinance 2007-04	4/23/07
Driveway Permits-Residential	\$100		Ordinance 2007-04	4/23/07
Driveway Permits-Commercial/Industrial	\$Actual Review Cost (\$150 minimum)		Ordinance 2007-04	4/23/07
Code Enforcement inspections before/after regular work hours (8:00 a.m. to 5:00 p.m. Monday-Friday, except on holidays)	\$75 per hour. Weekends: \$200 minimum fee. Travel time as necessary: \$75 per hour.		Ordinance 2007-04	4/23/07
Health Inspector fee for health inspections not related to a building permit	\$50 per inspection		Ordinance 2007-04	4/23/07
Inspections for changes in use to a property or changes in tenant where no construction work is required.	\$25 per inspection		Ordinance 2007-04	4/23/07
Re-inspection fees: After an initial construction inspection has failed, only one follow-up inspection allowed at no cost.	\$50 per inspection		Ordinance 2007-04	4/23/07

In the event that a building permit is withdrawn, 20% of the building permit fee will be retained by the Town of Durham to cover the costs of administrative and technical review of the application



TOWN OF DURHAM

8 Newmarket Road
Durham, NH 03824
Tel: 603-868-5571
Fax: 603-868-1858
www.ci.durham.nh.us

AGENDA ITEM: **#9F**

DATE: **December 15, 2025**

COUNCIL COMMUNICATION

INITIATED BY: Todd I. Selig, Administrator
Gail Jablonski, Business Manager

AGENDA ITEM: SHALL THE TOWN COUNCIL ADOPT RESOLUTION #2025-22
APPROVING THE FY 2026 OPERATING, CAPITAL, AND SPECIAL FUND
BUDGETS, AND THE 2026-2035 CAPITAL IMPROVEMENT PLAN, AS
AMENDMENTED?

CC PREPARED BY: Karen Edwards, Administrative Assistant

PRESENTED BY: Todd I. Selig, Administrator
Gail Jablonski, Business Manager

AGENDA DESCRIPTION:

The Council held a public hearing on the 2026 Budgets and proposed CIP at their meeting of November 17, 2025. The Council continued with their deliberations on the budgets on December 1 and December 8. Resolution #2025-22 incorporates all of the changes made by the Council and is ready for adoption.

LEGAL AUTHORITY:

Durham Town Charter, Article 5 "Finance", Sections 5.1 – 5.12.

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby Adopt Resolution #2025-22 Approving the FY 2026 Operating, Capital, and Special Fund Budgets, and the 2026-2035 Capital Improvement Plan as amended.

RESOLUTION #2025-22 OF DURHAM, NEW HAMPSHIRE

TOWN COUNCIL APPROVAL OF THE FY 2026 GENERAL OPERATING BUDGETS, THE CAPITAL FUND BUDGET AND THE 2026-2035 CAPITAL IMPROVEMENT PLAN

WHEREAS, the Town Council of Durham, New Hampshire, in accordance with Article 5 of the Durham Town Charter, has reviewed the proposed FY 2026 budgets and Capital Improvements Plan and conducted a public hearing on November 17, 2025 on the proposed FY 2026 Town Budgets and Capital Improvement Plan; and

WHEREAS, the Town Council hereby approves the **General Fund Budget** in the amount of **\$22,179,825** with an estimated property tax rate of **\$5.93** per thousand of assessed valuation; and

WHEREAS, in 2026 the Town of Durham will be transferring ninety percent (90%) of the Depot Road Fund net revenues and one hundred percent (100%) of the Parking Fund net revenues to the General Fund; and

WHEREAS, the Town Council, as agents to expend, are appropriating as a revenue source an amount not to exceed \$89,000 from the Employee Earned Leave Buyout Trust for anticipated retirements in 2026; and

WHEREAS, the Town Council is appropriating use of \$1,640,000 from the Unassigned General Fund Balance for the following items - Residential and Commercial Abatements (\$175,000), Eversource Abatements (\$360,000), and Potential Student Housing Abatements (\$1,105,000); and

WHEREAS, the 2026 budgets include funds to be allocated by the Administrator to be used for compensation of union and non-union employees; and

WHEREAS, the Town Council hereby approves the **Water Fund Budget** in the amount of **\$1,794,960** and hereby sets the water rate at **\$11.25** per hundred cubic feet of metered water billed effective 01/01/26 for Durham water users and at **\$12.94** per hundred cubic feet of metered water billed for the Lee Traffic Circle Water Line Extension users effective 01/01/26; and

WHEREAS, the Town Council hereby approves the **Sewer Fund Budget** in the amount of **\$3,462,062** and hereby sets the sewer rate at **\$11.08** per hundred cubic feet of metered water billed effective 01/01/26; and

WHEREAS, the Water and Wastewater System Agreement between the Town of Durham and University System of New Hampshire reads “the jointly funded capital reserve fund for the **water system**, in the custody of the Town of Durham’s Trustees of the Trust Funds, ... should not exceed \$800,000.”; and also reads “the jointly funded capital reserve fund for the **wastewater system**, in the custody of the Town of Durham’s Trustees of the Trust Funds, ... should not exceed \$800,000” and contributions not to exceed \$40,000 annually to each fund are included in the water and sewer fund budgets; and

WHEREAS, the Town Council hereby approves the **Parking Fund Budget** in the amount of **\$575,000**; and

WHEREAS, The Town Council hereby approves the **Capital Fund Budget** in the amount of **\$9,679,720** with \$898,167 to be raised through property taxes, user fees and general revenues; \$468,333 to be funded from the University System of New Hampshire; \$6,582,220 to be raised in revenues from bonds, notes, and other forms of long-term debt; \$70,000 to be funded from the Joint Town/UNH Fire Department Capital Reserve Fund (Town Council authorized agents to expend); \$55,000 to be funded through the Municipal Transportation Improvement Capital Reserve Fund (Town Council authorized agents to expend); \$1,456,000 through grants and \$150,000 from the Unassigned Churchill Rink Fund Balance; and

WHEREAS, the Town Council hereby approves the **Depot Road Parking Lot Fund Budget** in the amount of **\$189,000**; and

WHEREAS, the Town Council hereby approves the **Churchill Rink Fund Budget** in the amount of **\$562,500**; and

WHEREAS, the Town Council hereby approves the **Library Fund Budget** in the amount of **\$667,245** with \$647,245 being funded through a transfer from the general fund and \$20,000 funded by the Library Board of Trustees; and

WHEREAS, the Town Council hereby approves the **Downtown Tax Increment Financing District Budget** in the amount of **\$190,000**; and

WHEREAS, in accordance with Section 5.7 of the Town of Durham Charter, the Town Council does hereby authorize the Administrator to transfer any balance or portion thereof from the Town Council Contingency fund line item or other general fund line item to any department during 2026; and

WHEREAS, the Administrator will not hire additional regular full-time employees during 2026 without first informing the Town Council, except for those regular full-time positions provided for in the approved 2026 Budget;

NOW, THEREFORE BE IT RESOLVED by the Durham Town Council that an estimated amount of **\$13,133,225 (\$12,943,225 of general tax revenue and \$190,000 of Tax Increment Financing District tax revenue)** shall be raised by taxation which together with estimated operating revenues of **\$26,167,087** for the aggregate amount of **\$39,300,312** is hereby raised and appropriated for the use of the various departments of the town government for the fiscal year beginning January 1, 2026.

BE IT FURTHER RESOLVED that the Town Council of the Town of Durham, New Hampshire hereby adopts **Resolution #2025-22 APPROVING** the FY 2026 General Operating Budgets, Capital Fund Budget, and 2026-2035 Capital Improvement Plan by a majority vote of the Durham Town Council. **(A Summary of Budgets by Funds accompanies this Resolution, which is attached.)**

PASSED AND ADOPTED this 15th day of December, 2025 by a majority vote of the Durham Town Council with _____ affirmative votes, _____ negative vote, and _____ abstentions.

Joseph Friendman, Chair
Durham Town Council

ATTEST:

Rachel Deane, Town Clerk-Tax Collector

SUMMARY OF BUDGETS BY FUND

General Fund	\$22,179,825
Water Fund	\$ 1,794,960
Wastewater (Sewer) Fund	\$ 3,462,062
Parking Fund	\$ 575,000
Capital Fund	\$ 9,679,720
Depot Road Fund	\$ 189,000
Churchill Rink Fund	\$ 562,500
Library Fund	\$ 667,245
TIF District Fund	<u>\$ 190,000</u>
 TOTAL ALL FUNDS	 \$39,300,312

From: [Todd Selig](#)
To: [Todd Selig](#)
Cc: [Gail Jablonski](#)
Subject: listing of 2026 budget reductions
Date: Thursday, December 11, 2025 1:16:45 PM
Attachments: [image001.png](#)

Dear Members of the Council,

Business Manager Gail Jablonski has prepared a complete list of amendments, totaling \$269,510, to be made to the 2026 Administrator's budget proposal. \$75,880 will be added to the revenue side.

These changes will bring the estimated tax rate for 2026 to \$5.93 – an increase of \$0.81 or 15.89%. The original proposed budget presented by Todd showed a tax rate increase of 18.02%.

In addition, changes made to the CIP are as follows:

2026 Madbury Road Phase V – \$1,820,000 Funding changed from 100% bonding to \$364,000 Bond and \$1,456,000 Grant Funds
2026 Renovation of Tennis/Pickleball Courts - \$100,000 Project moved to 2027
2026 Fire Station Facility Improvements - \$500,000 reduced to \$400,000
2026 Seasonal Decorative Lighting - \$2,500 Removed from 2026 Program

The formal Budget Resolution incorporating all of these changes is included in the Town Council packet for approval on Monday, December 15th.

2026 PROPOSED EXPENDITURE REDUCTIONS						
PAGE NUMBER	LINE NUMBER	ACCOUNT NUMBER	DESCRIPTION	2026 PROPOSED	2026 REVISED	DIFFERENCE
61	7	01-4130-101-88-000	Contingency - Council	\$ 100,000	\$ 50,000	\$ (50,000)
144	74	01-4130-201-36-000	Contracted Services - TA	\$ 22,500	\$ 15,000	\$ (7,500)
57	13	01-4140-102-96-000	Capital - Moderator	\$ 17,000	\$ 12,000	\$ (5,000)
30	173	01-4152-302-25-000	Office Supplies - Assessing	\$ 500	\$ 350	\$ (150)
90	219	01-4191-401-08-000	Travel & Mileage Reimb - Planning	\$ 2,500	\$ 1,500	\$ (1,000)
44	289	01-4191-415-36-000	Contracted Services - HDC	\$ 4,000	\$ 2,000	\$ (2,000)
81	78	01-4199-204-01-098	Vacation and Sick Buy-Out - Other General Gov	\$ 34,700	\$ 71,000	\$ 36,300
81	81	01-4199-204-02-320	Medicare - Other General Gov	\$ 1,500	\$ 2,300	\$ 800
81	82	01-4199-204-02-330	Retirement - Other Gen Gov	\$ 17,400	\$ 29,000	\$ 11,600
53	109	01-4199-206-45-000	General Supplies - DCAT	\$ 15,680	\$ 14,580	\$ (1,100)
82	135	01-4199-209-28-000	Professional Development - GIS	\$ 1,900	\$ 1,650	\$ (250)
97	380	01-4210-601-01-020	P-T Wages - Police	\$ 25,800	\$ 20,000	\$ (5,800)
97	386	01-4210-601-02-310	Soc Sec - Police	\$ 13,220	\$ 12,920	\$ (300)
97	387	01-4210-601-02-320	Medicare - Police	\$ 36,140	\$ 36,050	\$ (90)
98	397	01-4210-601-09-000	Educ, Train & Seminars - Police	\$ 49,000	\$ 40,000	\$ (9,000)

98	398	01-4210-601-10-000	Accreditation - Police	\$ 15,000	\$ 14,000	\$ (1,000)
98	400	01-4210-601-17-000	Telephone/Fax - Police	\$ 29,280	\$ -	\$ (29,280)
100	418	01-4210-601-73-000	Radios - Police	\$ 12,000	\$ 6,000	\$ (6,000)
101	421	01-4210-601-90-014	Bicycle Patrol - Police	\$ 1,500	\$ 1,000	\$ (500)
101	423	01-4210-601-90-016	Comfort Animal Expense - Police	\$ 5,000	\$ 2,500	\$ (2,500)
101	424	01-4210-601-96-000	Capital - Police	\$ 22,600	\$ 18,800	\$ (3,800)
66	449	01-4220-701-09-000	Educ, Train & Seminars - Fire Admin	\$ 5,800	\$ 3,800	\$ (2,000)
66	452	01-4220-701-17-000	Telephone/Fax - Fire Admin	\$ 26,400	\$ 14,400	\$ (12,000)
67	463	01-4220-701-37-000	Legal Fees - Fire Admin	\$ 15,000	\$ 13,000	\$ (2,000)
68	464	01-4220-701-50-000	Building Rent - Fire Admin	\$ 264,000	\$ 284,000	\$ 20,000
75	472	01-4220-702-01-030	P-T Wages - Fire Suppression	\$ 35,240	\$ 12,000	\$ (23,240)
75	473	01-4220-702-01-030	O-T Wages - Fire Suppression	\$ 500,000	\$ 460,000	\$ (40,000)
77	527	01-4220-704-01-030	O-T Wages - Fire Train & Safety	\$ 84,200	\$ 80,200	\$ (4,000)
50	262	01-4240-411-28-000	Professional Development - Building/Code	\$ 1,500	\$ 800	\$ (700)
118	650	01-4194-802-52-000	Equipment Maint - Town Hall	\$ 11,800	\$ 1,800	\$ (10,000)
124	807	01-4312-824-36-000	Contracted Services - Drainage/Vegetation	\$ 29,000	\$ 21,500	\$ (7,500)
131	837	01-4312-826-96-000	Capital - Traffic Control	\$ 2,000	\$ 1,000	\$ (1,000)
120	700	01-4520-807-40-000	Cleaning Service - Wagon Hill	\$ 19,440	\$ 4,440	\$ (15,000)
108	718	01-4520-808-45-000	General Supplies - Grounds Maintenance	\$ 20,160	\$ 18,160	\$ (2,000)
132 - 136		See Attached	Sanitation Department	\$ 603,660	\$ 562,455	\$ (41,205)
45	375	01-4321-530-00-000	Integrated Waste Management Committee	\$ 7,500	\$ 2,500	\$ (5,000)
141	366	01-4520-502-36-000	Contracted Services - Recreation	\$ 174,500	\$ 179,500	\$ 5,000
140	364	01-4520-502-28-000	Professional/Staff Dev - Recreation	\$ 2,650	\$ 1,650	\$ (1,000)
147	344	01-4912-473-98-010	Transfer to Library	\$ 666,040	\$ 647,245	\$ (18,795)
145	345	01-4913-474-98-007	Transfers to Cap Projects Fund (Seasonal Lighting)	\$ 729,000	\$ 726,500	\$ (2,500)
146	346	01-4915-476-98-081	Transfers to Cap Reserve (Fire Reserve)	\$ 50,000	\$ 20,000	\$ (30,000)
Anticipated Expense Changes						\$ (269,510)

Todd

Todd I. Selig, Administrator

Town of Durham, NH

8 Newmarket Rd., Durham, NH 03824 USA

Office: 603.868.5571 | Mobile: 603.817.0720

www.ci.durham.nh.us | tselig@ci.durham.nh.us



TOWN OF DURHAM

8 Newmarket Road
Durham, NH 03824
Tel: 603-868-5571
Fax: 603-868-1858
www.ci.durham.nh.us

AGENDA ITEM: **#11** *TS*

DATE: **December 15, 2025**

COUNCIL COMMUNICATION

INITIATED BY: Todd Selig, Administrator

AGENDA ITEM: PRESENTATION BY DWIGHT TRUEBLOOD AND NEIL SLEPIAN ON THE CONSERVATION COMMISSION'S WORK ON MAKING CHANGES TO THE WETLAND CONSERVATION AND SHORELAND PROTECTION OVERLAY DISTRICT ORDINANCES.

CC PREPARED BY: Michael Behrendt, Town Planner

PRESENTED BY: Dwight Trueblood & Neil Slepian

AGENDA DESCRIPTION:

The Conservation Commission has developed a proposed new wetland and shoreland ordinance which is a significant change from the existing ordinances. Todd Selig, Dwight Trueblood, Neil Slepian, and Michael Behrendt thought that it would be beneficial to explain the proposal to the Town Council since it is generating a lot of interest from the public now.

Subcommittee. Several years ago, the Conservation Commission recognized that the Wetland Conservation Overlay District (WCOD) and the Shoreland Protection Overlay District (SPOD) needed to be updated. In late 2022, the commission appointed a subcommittee to work on rewriting the overlay districts. Michael Behrendt, Town Planner, assisted the subcommittee.

The members of the subcommittee were:

- Emily Friedrichs, Planning Board representative
- Sally Needell, former Conservation Commission chair
- Paul Rasmussen, Planning Board representative
- Neil Slepian, Conservation Commission representative
- Dwight Trueblood, Conservation Commission representative

The subcommittee met from December 15, 2022 to February 29, 2024. The subcommittee completely rewrote the ordinances but used the current format as a guide. The two overlay districts were combined into one Wetland and Shoreland Overlay District (WSOD).

The subcommittee turned over its draft to the Conservation Commission. The commission reviewed the draft from March 25, 2024 to May 27, 2025 when the commission endorsed the amendment. The commission made numerous changes to the draft prepared by the subcommittee but retained the main structure.

Planning Board. The commission then planned to turn the proposed amendment over to the Planning Board for prospective initiation as is or with changes. Dwight Trueblood and Neil Slepian presented the draft to the board on August 27, 2025. The Planning Board advised the commission that there are several significant projects now before the board and they planned take up the proposal in the near future as time allowed.

Subsequently, concerns were expressed by numerous residents, especially those living adjacent to Little Bay and the tidal portion of the Oyster River where the buffer was proposed to increase to 330 feet. Rather than have the Planning Board hold a hearing on the draft or start to review it and consider changes, the Planning Board recommended that the Conservation Commission hold a public session first to explain the ordinance to the public and listen to concerns.

Public Session. The commission held a public session at its meeting on October 27, 2025. Many residents expressed a range of concerns with the proposal. At the November 24, 2025 meeting the commission created three subcommittees to take another look at the amendment giving consideration to the points raised by residents. There are now three subcommittees, each composed of three members of the commission. One is evaluating Section 175-60 pertaining to Applicability and Buffers, one is evaluating Section 175-61. A. pertaining to the wooded buffer, and one is evaluating Sections 175-62, 63, and 64, pertaining to Permitted Uses and Conditional Uses. The subcommittees are starting to meet now. These are public meetings and agendas will be posted.

The subcommittees will bring their recommendations back to the Conservation Commission. The commission will then make any appropriate changes to the draft and forward it to the Planning Board for consideration. We will then follow the standard procedure for zoning amendments. If the board initiates the amendment as written or as revised, the draft will then come to the Town Council for consideration.

The following documents are attached:

- The Wetland and Shoreland Overlay District as currently proposed (subject to change)
- The current Wetland Conservation Overlay District
- The current Shoreland Protection Overlay District
- A matrix showing the differences between the current overlay districts and the proposal

You can see all of the other documents related to the amendment here:

https://www.ci.durham.nh.us/boc_planning/wetland-and-shoreland-overlay-district

LEGAL AUTHORITY:

N/A

LEGAL OPINION:

N/A

FINANCIAL DETAILS:

N/A

SUGGESTED ACTION OR RECOMMENDATIONS:

No formal action required. Receive presentation from Dwight Trueblood and Neil Slepian and hold question and answer session if desired.

WETLAND AND SHORELAND OVERLAY DISTRICT

Proposed Ordinance Amendment endorsed by the Conservation Commission

May 27, 2025 (links in Appendix updated June 9, 2025)

- ❖ Remove existing **Article XIII. Wetland Conservation Overlay District** and **Article XIV. Shoreland Protection Overlay District**, in entirety, and add a new **Article XIV. Wetland and Shoreland Overlay District**, as follows:

ARTICLE XIV. WETLAND AND SHORELAND OVERLAY DISTRICT

175-58. Definitions and Acronyms.

BOG – A type of wetland characterized by wet, poorly drained peat-rich soils, usually acid rich from accumulated plant material. Bogs frequently are found surrounding a body of open water and often have characteristic flora such as sedges, heaths, and sphagnum.

ECOLOGICAL VALUE - the environmental functions performed by all lands and waters to support the variety of habitats and the abundance and diversity of all native and naturalized flora and fauna.

GROUND COVER – Low growing plants that cover an area of ground and provide protection from surface water runoff and topsoil erosion.

INVASIVE PLANTS – Plants that are not native and not naturalized to a particular area which are a threat to local ecosystems. Invasive plants are identified as such by the New Hampshire Department of Environmental Services and the New Hampshire Department of Agriculture, Markets, and Food.

LAWN – An area predominantly of grass typically located near a house that is mowed to keep the length short for aesthetic or recreational purposes.

NATIVE VEGETATION – A plant or plant community that has developed over time and is adapted to the local climate, soil, and other environmental factors. Native vegetation is identified as such by UNH Cooperative Extension.

NATURALIZED VEGETATION – Noninvasive plants that are not native to a particular area but have spread or been introduced there by adapting to the local environment, allowing them to grow and reproduce. Naturalized vegetation is identified as such by UNH Cooperative Extension. (See examples in the Appendix to the Durham Site Plan Regulations.)

NHDES – The New Hampshire Department of Environmental Services.

PERENNIAL STREAM – A stream or brook that, under normal circumstances, runs all year long (in contrast to an intermittent or seasonal stream which runs only part of the year and an ephemeral stream which runs only after significant rain events).

RARE AND EXEMPLARY COMMUNITY – A natural community that has been identified by the New Hampshire Natural Heritage Bureau as being an exemplary example of a particular type of community and/or location of rare plants or animals.

REFERENCE LINE - The regulatory limit of a surface water or wetland determined as follows:

1. For rivers and streams, the ordinary high-water mark.
2. For natural freshwater bodies without artificial impoundments, the natural mean high-water level as determined by NHDES.
3. For artificially impounded water bodies the waterline at full pond as determined by the elevation of the spillway crest.
4. For coastal and tidal waters, the highest observable tide line, which is that line defining the furthest landward limit of tidal flow, not including storm events, which can be recognized by indicators such as the presence of a strand line of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks further flow of the tide.
5. For wetlands, the delineated edge of the wetland.

RSA – Revised Statutes Annotated. Reference to specific laws of the State of New Hampshire.

TIDAL WATERS - waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects (See Reference Line, above).

TREATED SOILS – Soils decontaminated by a treatment process and certified for distribution and use as soil under NH Env-Wm 3203.11, having originally been contaminated with liquids or materials not regulated by the State of New Hampshire as hazardous waste defined under NH Env-Wm 2603.01.

UNH – The University of New Hampshire.

VERNAL POOL – A seasonal body of water that provides essential breeding habitat for certain amphibians and invertebrates, does not support viable fish population, and meets the criteria for a vernal pool established by the New Hampshire Fish and Game Department, Nongame and Endangered Wildlife Program, Identification and Documentation of Vernal Pools in New Hampshire, rev 2004, as amended.

WATER-DEPENDENT STRUCTURE – A structure that serves and supports activities that require direct access to, or contact with the water, or both, as an operational necessity and that requires a permit under RSA 482-A, including but not limited to a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp.

WETLAND – An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soils. Wetlands include, but are not limited to, swamps, marshes, bogs, vernal pools, and similar areas.

WETLAND, NON-TIDAL – A wetland whose vegetation, hydrology, and soils are not influenced by periodic inundation by tidal waters.

WETLAND, PRIME – A wetland designated by the Town Council in accordance with RSA 482-A:15 as having one or more of the values set forth in RSA 482-A:1 and that, because of its size, unspoiled character, fragile condition or other relevant factors, makes it of substantial significance.

WETLAND, TIDAL – A wetland that may extend beyond (upgradient from) the highest observable tide line whose vegetation, hydrology, or soils are influenced by periodic surface or subsurface inundation by tidal waters.

WILDLIFE CORRIDOR - Wildlife corridors connect habitats so that wildlife can move between areas. They are critical for the conservation of wildlife in New Hampshire.

175-59. Purpose of the Wetland and Shoreland Overlay District.

The Wetland and Shoreland Overlay District (WSOD) is an overlay district intended to manage the use of wetlands, open waterbodies, and adjacent buffers in coordination with New Hampshire Revised Statutes Title L – Water Management and Protection, as amended. The purpose of this article is to:

- A. Improve the quality of wetlands and water bodies by filtering pollutants through adequate vegetation;
- B. Minimize flooding and flood damage during extreme future weather events;
- C. Protect wildlife and fisheries habitats and enhance habitat connectivity;
- D. Maintain stream flow and groundwater recharge;
- E. Conserve natural beauty and scenic quality;
- F. Preserve natural shoreland vegetation to stabilize banks and prevent erosion;
- G. Improve resiliency in the face of climate change; and
- H. Limit uses and activities in the wetlands, waterbodies and buffer to those that are consistent with the goals stated herein.

175-60. Applicability.

A. The provisions of the WSOD apply to the following areas of the town of Durham:

1. Wetlands. 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
- b. wetlands that are human-made, non-abandoned, and currently functioning and maintained including:
 - i. ditches and swales;
 - ii. stormwater and sedimentation basins;
 - iii. agricultural and irrigation ponds and swales; and
 - iv. fire ponds and cisterns.

2. Waterbodies. The following waterbodies including any tidal tributaries:

- a. Great Bay and Little Bay;
- b. Oyster River, Lamprey River, and Bellamy River;
- c. Beard's Creek, Beaudette Brook, Bedford Brook, Bunker Creek, College Brook, Crommett Creek, Ellison Brook, Follett's Brook (including South Fork), Hamel Brook, Horsehide Brook, Johnson Creek, Laroche Brook, Littlehale Creek, Longmarsh Brook, Pettee Brook, and Woodman Brook;
- d. All other perennial streams; and
- e. Durham Reservoir

3. Buffers. Land adjacent to the wetlands and waterbodies identified in 1. and 2., above, with a width from the reference line as stated below. Where a zoning district is referenced below, the width of the buffer is determined by the subject property's underlying zone not by the zone where the wetland or waterbody is located.

- a. Bogs, prime wetlands, and rare and
exemplary wetland communities: 200 feet
- b. Vernal pools: 150 feet
(See references for Best Management Practices for vernal pools in Appendix)
- c. All other non-tidal wetlands
 - in all zones other than the Core Commercial zones: 100 feet
 - in the Core Commercial zones: 30 feet

- d. All tidal waters including Great Bay and Little Bay;
tidal portions of the Oyster River, Bellamy River, Beard's Creek, Bunker
Creek, and Johnson Creek; their tidal tributaries; and wetlands located
adjacent to tidal waters: 330 feet
 - f. Lamprey River and Durham Reservoir: 200 feet
 - g. The non-tidal section of the Oyster River and all other perennial non-tidal
rivers and streams except College Brook and Pettee Brook 150 feet
 - h. College Brook and Pettee Brook:
- in all zones other than the Core Commercial zones: 100 feet
- in the Core Commercial zones: 30 feet
- B. Applicants are responsible, to the extent possible, for identifying any wetlands on
neighboring properties where the wetland buffer would apply and showing them on
the plan.
- C. Wetlands 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.
- D. 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. (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.)
- E. Photographs of the work area and surrounding buffer shall be provided.

175-61. General Requirements for the buffer of the WSOD.

The following performance standards apply to the buffer within the WSOD except as
allowable uses, activities, and structures may be approved as provided for under Permitted
Uses and Conditional Uses in this article below. See the Appendix at the end of this article
for specific references.

- A. *Native and Naturalized Vegetation*
A native or naturalized vegetated buffer is established to protect water quality by
minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing

excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural conditions of the protected wetland and shoreland. *Note. The width of buffer that applies to this Section A. Native and Naturalized Vegetation is 150 feet or the width of the buffer applicable to the specific wetland or waterbody given in Section 175-60 A. 3., above, whichever is less.

Within the buffer, all of the following standards and procedures apply. **Vegetation may be cut and removed as specified below only in consultation with the Durham Tree Warden or their designee, which may include a licensed forester or arborist.** See Sections below for Permitted Use A and Permitted Use B for further guidance.

1. **Lawns, gardens, and landscaped areas.** No new lawn, garden, or landscaped area shall be created within the buffer, except within 15 feet of the house or other principal building.
2. **Existing lawns.** Existing lawns within 30 feet of the reference line *may not* be mowed and must be re-established, or allowed to re-establish, with native or naturalized vegetation. (This provision supersedes the 15-foot exception in 1, above.)
3. **Groundcover.** Groundcover shall be left intact and not mowed. It shall not be removed, except for plants that are diseased, toxic, invasive, or located within 15 feet of the house or other principal building.
4. **Stumps and root systems.** Stumps and root systems shall be left intact and shall not be removed. However, stumps and root systems may be removed for plants that are diseased, toxic, invasive, or located within 15 feet of the house or main building.
5. **Trees under 6 inches in diameter.** Selective cutting of shrubs and trees with a trunk under 6 inches in diameter (measured 4-1/2 feet above the ground) is permitted provided that groundcover is not disturbed and a healthy, well distributed stand of trees, saplings, and shrubs and their undamaged root systems is maintained (See exceptions in 7. and 11., below).

Not more than 50 percent of the total number of trees under 6 inches in diameter (measured 4-1/2 feet above the ground) may be removed in any 20-year period, except as provided in 7. and 11., below.

6. **Trees over 6 inches in diameter.** No trees over 6 inches in diameter (measured 4-1/2 feet above the ground) may be cut or removed within the buffer, except as provided in 7. and 11., below.

7. **Removal of trees.** Individual trees may or may not be removed as follows:
 - a. Any trees that are a threat to persons or property may be removed;
 - b. Any trees that are diseased, toxic, or invasive (as recognized by the State of New Hampshire) may be removed;
 - c. Any trees that could likely compromise the integrity of a site may be removed (example: a severely leaning tree that could rip out a slope if it falls):
 - d. Dead trees, whether standing or fallen, located within 50 feet of a house or other principal building may be removed (except in the case of e, below).
 - e. Dead trees, whether standing or fallen, located within 25 feet of the reference line may not be removed (except in the case of a., b., or c., above); and
 - f. In all cases, if removal of one or more trees results in the creation of a cleared opening, the opening must be replanted with native or naturalized species unless sufficient existing vegetation is in place to fill the opening.
8. Vegetation may be removed to provide for a foot path(s) not to exceed 6 feet in width. Any path to the shoreline should meander some in order to slow runoff and reduce erosion.
9. The application of pesticides, herbicides, and fertilizers is prohibited except in conjunction with allowed agricultural activities in accordance with Subsection C, below
10. When a landowner applies for an approval to the Planning Board under this article, the board may require that all or portions of the buffer be re-established to the extent reasonable as part of an approval.
11. **Forestry.** Forestry activity shall be conducted in accordance with the Basal Area Law RSA 227-J:9 and best forest management practices. See reference in appendix.

B. *Sedimentation and Erosion Control*

All activities and the use of buildings, structures, and land within the WSOD 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 Best Management Practices (BMPs) for stormwater management and general Town standards (See the Appendix to this article).

C. *Agricultural Activity*

Agriculture and activity related to agriculture, including the application of pesticides, herbicides, and fertilizers is not permitted:

1. within any wetland or waterbody included in this overlay district; nor

2. within 100 feet of the reference line of those wetlands and waterbodies (or within the buffer where the buffer is less than 100 feet).

Exceptions to these restrictions, immediately above, are permitted where the Code Administrator, in consultation with the Durham Agricultural Commission or the Strafford County Conservation District, determines that:

1. the activity will be done in accordance with Best Management Practices; or
2. the potential adverse impact upon the wetland or waterbody will be minor and inconsequential in cases where best management practices are not applicable.

(See references for Best Management Practices in the appendix.)

Site plan review for agricultural activity may be required in accordance with the Durham Site Plan Regulations or other provisions of this ordinance.

D. *Septic Systems*

Any new septic tank, leach field, or other sewage disposal system, but not including Town sewer lines and private septic lines, shall be set back at least 150 feet from the reference line. (The allowance for sewer lines and septic lines under Conditional Uses, below, does not apply to septic tanks, leach fields, and other sewage disposal systems.)

The replacement of an existing septic system, septic tank, leach field, or other sewage disposal system that is located within the required setback from the reference line of the wetland or waterbody 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, soil conditions, and other constraints peculiar to the site. If the Health Officer/Zoning Administrator/Code Enforcement Officer determines that a replacement system must be located within the required wetland or waterbody 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.

E. *Salt Use and Snow Storage*

Snow storage areas for parking lots for all new development and significant redevelopment, except for single family property, shall not be located within the buffer. Certified Green SnoPro contractors shall be used to plow parking lots for new development and significant redevelopment. Sodium chloride salt used for deicing shall be properly stored, and applied using the minimum amount necessary, according to accepted Best Management Practices as published by NHDES (see Appendix) to minimize its impact on wetlands and public health. Alternatives such as calcium magnesium acetate (CMA) and potassium acetate (KA) are encouraged.

175-62. Permitted Use A – Uses That Do Not Require Review.

Notwithstanding the uses permitted in the underlying zoning district, the following uses, activities, and structures shall be allowed without a permit or Town approval in the WSOD 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 requirements of the WSOD:

1. Within the buffer, but outside of the wetland: the planting of native or naturalized species as provided in Section 175-61.A., above;
2. Planting, cutting, removal, maintenance of vegetation and forestry done in conformance with the performance standards for handling vegetation in the buffer in Section 175-61.A., above;
3. Agriculture (including agriculture as a principal and as an accessory use) in accordance with Section 175-61.C., above;
4. The installation and observation of monitoring wells;
5. Conservation activities;
6. The creation of unpaved trails and paths with a width not exceeding 6 feet that: a) do not involve significant regrading; and b) are constructed in accordance with Best Management Practices (See the Appendix);
7. Maintenance of an existing structure; and
8. The maintenance and minor repair of a pier or dock provided the activity is approved by the appropriate state agency (Otherwise the activity is treated as a Permitted use B).

175-63. Permitted Use B – Uses That Require Conservation Commission and Planning Board Review. The following uses, activities, and structures, including any necessary grading, shall be permitted in the WSOD only if they are permitted in the zoning district and, after review by the Conservation Commission, the Planning Board determines that the Permitted Use B criteria, below, are met. Applications for a Permitted Use B shall be listed specifically on Conservation Commission and Planning Board agendas but neither a public hearing nor notices is required.

1. Within a wetland: 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 (See Appendix);

2. The installation of private water supply wells and lines serving a use on the lot (For reference for the applicant – Groundwater Level Rise in the Appendix.);
3. Temporary crossings for the maintenance or installation of utility pipes or lines or other utility structures that are located outside of the WSOD;
4. Temporary cofferdams associated with the repair or replacement of existing structures;
5. Expansion of nonconforming single-family and two-family structures in accordance with Section 175-30. D. 3. Requirements for Nonconforming Buildings and Structures in the WSOD;
6. The replacement or minor expansion of existing retaining walls;
7. Decks that are raised above the ground in such a manner as to permit the natural flow of any surface water;
8. The control of exotic aquatic weeds in accordance with RSA 487:17;
9. Grading of the site where grading within the WSOD is necessary to accommodate a structure located outside of the WSOD;
10. Fences that are not detrimental to wildlife corridors;
11. The installation, expansion, replacement or removal of a pier or dock provided the activity is approved by the appropriate state agency;
12. Aquaculture;
13. Departure, for good cause, from standards under Native and Naturalized Vegetation Section 175-61.A.; and
14. Items which are not explicitly addressed in this subsection but for which the proposed activity clearly:
 - a. would not have any significant adverse impact; and
 - b. would be consistent with the intent of this article, all as reasonably determined by the Planning Department in consultation with the Planning Board chair (and would then be reviewed under the Permitted Use B process).

Permitted Use B – Commission and Board Review Criteria.

- 1) The design, construction, maintenance and operation of the proposed structures and activities within the wetland, waterbody, and buffer will minimize soil erosion and disturbance, and adverse impacts to water quality to the extent workable.

- 2) Mitigation and restoration activities for the area being disturbed will allow for the site to perform the functions of the wetland, waterbody, and buffer to the extent workable. Native or naturalized vegetation will be re-established as appropriate (See Section 175-60 A. 1. for reference).

Conservation Commission Review.

Applications under this subsection B. shall be presented to the Conservation Commission for its review. The commission will then forward its comments to the Planning Board. If any pertinent element of the application changes significantly after the Commission review, the application shall be returned to the Commission for additional review. The Planning Board shall not take final action on an application, including an application that has been returned to the Commission for additional review, until the Commission has offered its comments/recommendations (except as provided for below).

Applications shall be presented to the Conservation Commission in a timely manner. The Commission shall offer its comments/recommendations or decline to comment within 45 days of when the application, or a significant change to an application, is first presented to the Commission at a meeting, unless the Planning Board grants an extension of the timeframe.

175-64. Conditional Uses in the WSOD.

- A. **Conditional Uses.** The following uses, activities and structures, including any necessary grading, shall be permitted as conditional uses in the WSOD provided that the use, activity or structure is allowed in the underlying zoning district, and that, after review by the Conservation Commission, the Planning Board determines that all of the criteria in 175-64. B., below, are met.
 1. A single-family house. However, a single-family house must be set back a minimum of 150 feet from the reference line or beyond the buffer, whichever distance is less;
 2. Streets, roads, driveways, bridges and other access ways; culverts; paved sidewalks, trails, and paths; public trails and paths; and parking areas serving single-family houses (but not other uses). Culverts and bridges should be designed in accordance with Best Management Practices to allow for passage of wildlife in areas where habitat connectivity could otherwise be disrupted. Culverts should be sized to the Durham Public Works Drainage Standards (See Appendix);
 3. Utilities including water lines (other than for private wells; see Permitted Use B), sewer lines, gas lines, electric lines, and septic lines (See Septic Systems, above). However, freestanding solar arrays are not allowed in the Wetland and Shoreland Overlay District;

4. Accessory structures including patios and decks. However freestanding accessory structures may not be constructed on existing slopes that exceed 20%, nor may those slopes be regraded to accommodate the structure;
5. A non-residential building in a Core Commercial or Research/Industry zoning district; and
6. Plant nurseries subject to the standards in Section 175-61. C. Agricultural Activity.

B. Conditional Use Criteria

1. There is no alternative design and location on the parcel for the proposed project that would:
 - a) have less adverse impact on the WSOD 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 erosion and 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, waterbody, and buffer to the extent workable. Native or naturalized vegetation will be re-established as appropriate (See Section 175-60 A. 1. for reference); and
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.** Ecological value, in B. above, 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 native and naturalized flora and fauna.

D. Conservation Commission Review

Applications under this subsection shall be presented to the Conservation Commission for its review. The Commission will then forward its comments to the Planning Board. If any pertinent element of the application changes significantly after the Commission review, the application shall be returned to the Commission for additional review. The Planning Board shall not take final action on an application, including an application that has been returned to the Commission for additional review, until the Commission has offered its

comments/recommendations or the deadline for offering its comments, below, has passed.

Applications shall be presented to the Conservation Commission in a timely manner. The Commission shall offer its comments/recommendations within 45 days of when the application, or a significant change to an application, is first presented to the Commission at a meeting, unless the Planning Board grants an extension of the timeframe.

E. **Conditional Use Review Process**

Article VII. Conditional Use Permits delineates the process for conditional uses. Conditional use applications under this article are treated differently from other conditional use applications as follows.

1. The eight criteria given in **Section 175-23 - Approval Criteria** do not apply.
2. Written notice will be sent by verified mail to abutters as defined under RSA 672:3.
3. Placement of a sign on the subject lot, as specified under **Section 175-22. B. - Procedure for Consideration**, is not required.
4. An affirmative vote of a simple majority of Planning Board members is required to approve a conditional use.

175-65. Special Exception for Single-Family Residences in the WSOD.

The construction of a single-family residence, including a septic system serving a single-family residence, on an existing vacant lot within the Wetland and Shoreland Overlay District may be permitted by special exception if the Zoning Board of Adjustment finds that the proposal meets the general special exception criteria and the criteria below. Applicants shall submit all necessary materials to facilitate the review, including a site plan and landscaping plan, as appropriate. (See Section 175-69, below.)

1. The lot upon which the exception is sought was an official lot of record, as recorded in the Strafford County Registry of Deeds, prior to January 1, 1976 (just after the first adoption of the Wetland and Shoreland Overlay Districts).
2. It is not practical for the single-family use for which the exception is sought to be built on a portion or portions of the lot which is/are outside the Wetland and Shoreland Overlay District.
3. Due to the provisions of the Wetland and Shoreland Overlay District no reasonable and economically viable use of the lot can be made without the exception.
4. The location and design of the single-family residence and septic system will provide a reasonable building envelope with the maximum setback from the reference line considering the size, shape, and slope of the lot and natural conditions

of the site including, but not limited to, soils, flood hazard areas, shorelands and wetlands.

5. The design, location and construction of the proposed septic system will not cause any adverse impact to public health, ground or surface water, or ecological value (see definition) of nearby resources.

175-66. Prohibited Uses in the WSOD.

Any use that is not identified as an allowed use in 175-63, 175-64, or 175-65 is prohibited.

The following uses are deemed to pose a particular threat to shoreland or wetland habitat or water quality and are specifically prohibited in the WSOD:

1. the establishment or expansion of salt storage yards;
 2. automotive junk or salvage yards;
 3. the storage or handling of hazardous wastes;
 4. the bulk storage of chemicals, petroleum products, or hazardous materials;
 5. use of any fertilizer, pesticide, or herbicide except as provided for in Section 175-61.
- C. Agricultural Activity;
6. the processing of excavated materials;
 7. the dumping or disposal of snow or ice removed from roads or other off-site locations;
 8. the disposal, handling, or processing of solid wastes including transfer stations, recycling facilities, and composting facilities;
 9. animal feedlots;
 10. the disposal of septage or other liquid or leachate wastes except within an approved septic system;
 11. dumping, spreading or any other application or use of treated soils or sludge from a sewage treatment plant; and
 12. fences that are detrimental to wildlife corridors.

175-67. Compliance with Other Regulations

All land within the WSOD is also subject to the provisions of the underlying Town zoning district. Where there is a conflict among the provisions of the WSOD, any other applicable overlay district, the underlying zoning district, or state and federal regulations, the most stringent or restrictive provision shall apply.

175-68. Challenge to the Classification of Wetlands.

The following procedure shall be followed when there is a challenge to any designation of land under this article:

1. Any party with standing may submit a challenge. The challenge must be submitted in writing within 30 days of the meeting at which an application that includes a plan with delineated wetlands is presented to the Planning Board.
2. The Town Planner shall engage a state certified wetlands scientist (or soil scientist if appropriate) to review the classification.

3. The Town Planner may authorize the wetlands/soil scientist to conduct an on-site investigation.
4. The wetlands/soil scientist shall present evidence to the Town Planner who shall render a decision about the classification. The Town Planner may use any resource to assist in making a decision, including obtaining input from the Conservation Commission and the Planning Board.
5. All costs for use of the wetlands/soil scientist shall be borne by the party making the challenge to the classification. The party making the challenge shall place the estimated amount to cover the cost for the review into escrow with the Town expeditiously.

175-69. Applications for Variances and Special Exceptions.

When an application for a variance or a special exception pertaining to the WSOD is submitted to the Zoning Board of Adjustment, the Planning/Building Departments shall forward copies of the application to the Conservation Commission as soon as possible. The Commission may offer comments to the ZBA at its option. The ZBA, at its option, may continue an application to an additional meeting to provide time for the Commission to prepare its comments, but an application may not be continued to more than one additional meeting for this purpose.

175-70. Local Resources and Authority.

The Planning Board has final authority under this article independent of the status of any state or federal permitting related to the proposed project. The Planning Board may use any appropriate resources in reviewing applications, including those in the Appendix.

175-71. Enforcement.

Violations of this article, including violations that are encountered in the course of the review of an application under this article, shall be enforced consistent with the provisions of this Zoning Ordinance.

Any wetland, waterbody, or buffer altered in violation of this article shall be restored at the expense of the violator(s), as provided by RSA 482-A and Section 175-10 of this ordinance.

APPENDIX TO THIS ARTICLE

Sources serving as references for this article include, but are not limited to, the following.

GENERAL REFERENCES

Durham Site Plan Regulations - <https://www.ci.durham.nh.us/planning/site-plan-regulations>

Lists of recommended plants and prohibited invasive species included in Appendix B in the Durham Site Plan Regulations -

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/20721/landscaping_species_-_recommended.pdf

Durham Subdivision Regulations - <https://www.ci.durham.nh.us/planning/subdivision-regulations>

Durham Public Works Design & Construction Standards - <https://www.ci.durham.nh.us/publicworks/design-and-construction-standards>

AGRICULTURE

Manual of Best Management Practices (BMPs) for Agriculture in New Hampshire (New Hampshire Department of Agriculture, Markets and Food, 2019, as amended) -

<https://www.agriculture.nh.gov/publications-forms/documents/best-management-practices-bmp-manual.pdf>

Best Management Wetlands Practices (BMWPs) for Agriculture (New Hampshire Department of Agriculture, Markets and Food, 2019, as amended) -

<https://www.agriculture.nh.gov/publications-forms/documents/wetlands-bmp-manual.pdf>

BUFFERS

Buffers for the Bay - Explanations of Recommended Buffer Widths for Various Buffer Functions - <https://bufferoptionsnh.org/>

EROSION AND SEDIMENTATION CONTROL

Stormwater Management and Erosion and Sediment Control for Urban and Developing Areas in New Hampshire, NHDES, 1992.

<https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/wd-08-20c.pdf>

FLOODING/CLIMATE CHANGE

Map of Durham Advisory Climate Change Risk Areas -

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_board/page/54310/advisory_climate_change_risk_areas.pdf; See Article XV, Flood Hazard Overlay District for context and explanation.

FORESTRY

Best Management Practices for Forestry - UNH Extension Service -

<https://extension.unh.edu/resource/best-management-practices-forestry-protecting-new-hampshires-water-quality>

New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations - <https://extension.unh.edu/resource/new-hampshire-best-management-practices-erosion-control-timber-harvesting-operations>

GROUNDWATER LEVEL RISE

Study on Sea Level Rise and Impacts on Groundwater Levels and Water Quality:

https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning/page/18681/groundwater_vulnerability_report.pdf

LIVING SHORELINES

Nature-based approaches for shoreline stabilization in tidal waters in New Hampshire -

<https://www.des.nh.gov/water/coastal-waters/living-shorelines>

Living Shoreline Site Suitability Assessment: Technical Report, 2019 -

<https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/r-wd-19-19.pdf>

PLANT SELECTION

U.S. Army Corps of Engineers National Wetland Plant List, 2022

https://wetland-plants.sec.usace.army.mil/static/reports/NWPL%20Cover%20Page%20National_v3.pdf

Native Plant Trust Nursery - Plant Selection Tool -

<https://plantfinder.nativeplanttrust.org/Plant-Search>

SALT STORAGE

Storage and Management of Deicing Materials -

<https://www.nhms4.des.nh.gov/sites/g/files/ehbemt636/files/documents/2022-09/salt-storage.pdf>

Environmental impacts of salt and application guidelines -

<https://www.des.nh.gov/resource-center/publications?keys=wasfacsh&purpose=&subcategory=>

SEPTIC SETBACKS

Best Management Practices (BMPs) for Groundwater Protection (2020) NHDES Fact Sheet -

<https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/dwgb-22-4.pdf>

The Shoreland Water Quality Protection Act ([RSA 483-B](https://gc.nh.gov/rsa/html/L/483-B/483-B-5-b.htm)) -
<https://gc.nh.gov/rsa/html/L/483-B/483-B-5-b.htm>

STORMWATER MANAGEMENT – BEST MANAGEMENT PRACTICES

Best Management Practice for Urban Stormwater Runoff, NHDES, 1996

Innovative Stormwater Treatment Technologies Best Management Practices Manual, NHDES, 2002 - <https://core.ac.uk/download/72049415.pdf>

Homeowners Guide to Stormwater Management (2019) -
[New Hampshire Homeowner's Guide to Stormwater Management](#)

NH Stormwater Manual (2025) - <https://extension.unh.edu/stormwater-center/nh-stormwater-manual>

Porous Pavement - <https://scholars.unh.edu/stormwater/13/>

Stormwater Management and Erosion and Sediment Control for Urban and Developing Areas in New Hampshire, NHDES, 1992

UNH Stormwater Center - <https://extension.unh.edu/stormwater-center>

NHDES - 2025-2029 New Hampshire Non-Point Source Management Program Plan
<https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/r-wd-24-20.pdf>

TRAILS

NH Best Management Practices for Trail Construction & Maintenance (2017) -
<https://naturegroupie.org/sites/default/files/documents/bmp-manual2017.pdf>

VERNAL POOLS

Best Development Practices: Conserving Pool-Breeding Amphibians in Residential and commercial developments in the northeastern United States -
<https://www.maineaudubon.org/wp-content/uploads/2017/03/Best-Development-Practices-Conserving-Pool-breeding-Amph.pdf>

General Information about Vernal Pools, UNH Cooperative Extension -
<https://extension.unh.edu/resource/vernal-pools>

WETLANDS AND SHORELANDS MANAGEMENT, GUIDES, AND REGULATIONS

Erosion Control for Construction within the Protected Shoreland (2024) -
<https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/sp-1.pdf>

Lawn Care within the Protected Shoreland (2020) -

<https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/sp-2.pdf>

Pesticide Use Within the Protected Shoreland (2020) -

<https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/sp-3.pdf>

Shoreland Accessory Structures (2023) -

<https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/sp-6.pdf>

Vegetation Management for Water Quality (2020) -

<https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/sp-5.pdf>

Wetlands Best Management Practice Techniques for Avoidance and Minimization (2018) -

<http://neiwpcc.org/wp-content/uploads/2018/09/Wetlands-bmp-manual.pdf>

Wetlands Permitting: Avoidance, Minimization and Mitigation (2024) -

<https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/wb-21.pdf>

WILDLIFE CORRIDORS AND CROSSINGS

Best Management Practices (BMPs) for Wildlife Corridors -

[https://corridordesign.org/dl/docs/corridordesign.org BMPs for Corridors.pdf](https://corridordesign.org/dl/docs/corridordesign.org_BMPs_for_Corridors.pdf)

The Nature Conservancy's Connect the Coast Report - <https://www.nature.org/en-us/about-us/where-we-work/united-states/new-hampshire/stories-in-new-hampshire/connecting-wildlife-habitat/>

Nature Conservation report investigating the impact of human activity on wildlife crossings -

<https://natureconservation.pensoft.net/article/73060/>

NH Fish & Game's Wildlife Corridors - <https://www.wildlife.nh.gov/wildlife-and-habitat/nh-wildlife-corridors>

NH GRANIT's Wildlife Corridor GIS Overlay -

<https://nh-wildlife-corridors-nhgranithub.hub.arcgis.com/>

NH Stream Crossing Guidelines, 2009 -

https://www.nae.usace.army.mil/Portals/74/docs/regulatory/StreamRiverContinuity/nh_stream_crossing_guidelines_unh_web_rev_2.pdf

NH Wildlife Action Plan - <https://www.wildlife.nh.gov/wildlife-and-habitat/nh-wildlife-action-plan>

PROPOSED CHANGES TO OTHER PARTS OF THE ZONING ORDINANCE

Text Proposed to be Added is Shown Like This

Existing Text Proposed to be Deleted is Shown Like This

- ❖ Add the following text under Article I – General Provisions:

175-5.2 Measurements

All measurements under this ordinance along the land (such as building setbacks and lot frontages) are measured horizontally in a plane tangent to the Earth's surface, rather than in an up-and-down manner following ground contours, except as otherwise noted or required such as for ground slope.

- ❖ Add this language in **Section 175-7. Definitions.:**

LOT AREA – The total area within the boundary lines of a lot. The "lot area" does not include any part of a road right-of-way. *See Section 175-56 General Dimensional Standards for calculating minimum lot size.*

- ❖ Modify **Section 175-36. Overlay Districts**, as follows:

175-36. Overlay Districts.

In addition to the zoning districts (or "base zoning districts") identified in Section 175-35, there are ~~7~~⁶ overlay districts as follows:

WCOD	Wetland Conservation Overlay District
SPOD	Shoreland Protection Overlay District
<i>WSOD</i>	<i>Wetland and Shoreland Overlay District</i>
FHOD	Flood Hazard Overlay District
APOD	Aquifer Protection Overlay District
HOD	Historic Overlay District
PWSFOD	Personal Wireless Service Facilities Overlay District
AHOD	Attainable Housing Overlay District

- ❖ Delete current Subsection **175-29 Nonconforming Lots. B. Requirements for Individual Nonconforming Vacant Lots in the WSOD and SPOD.** in entirety and reletter Subsection C. to Subsection B.
- ❖ Modify **Section 175-30. Nonconforming Structures and Buildings**, as follows:

175-30. Nonconforming Structures and Buildings

D. Requirements for Nonconforming Buildings and Structures in the *WSOD* ~~*WCOD and SPOD.*~~

3. The construction of attached additions or other expansions to nonconforming

one- and two-family dwellings shall be permitted within the Wetland ~~and Shoreland Conservation~~ Overlay District ~~and Shoreland Protection Overlay District~~ by *Permitted Use B* provided that *these additional conditions are met*:

- a. The dwelling lawfully existed prior to the date on which this Article was enacted.
- b. The number of dwelling units ~~shall~~ *is* not ~~be~~ increased.
- c. The building footprint existing prior to the date on which this Article was enacted ~~shall~~ *is* not ~~be~~ cumulatively increased by more than fifteen (15) percent.
- d. The habitable floor area existing prior to the date on which this Article was enacted ~~shall not be~~ *is not* cumulatively increased by more than thirty (30) percent.
- e. The proposed construction ~~shall conform~~ *conforms* to all other applicable ordinances and regulations of the Town of Durham.
- f. The Permitted Use B criteria specified in the Wetland and Shoreland Overlay District are met.*

- ❖ Change **Article XII.1 Use and Dimensional Standards** to **Article XIII. Use and Dimensional Standards** and make other appropriate changes in the ordinance, including in the Table of Contents, to reflect this change.
 - ❖ In **Section 175-54. Table of Dimensions** add note in both **Minimum Lot Size in Square Feet** and **Minimum Lot Area Per Dwelling Unit** “See Note 8, below.”
 - ❖ Add new note at the bottom of Section 175-54. Table of Dimensions as follows: “8. See Subsection 175-56. H. Calculating Lot Area and Density.”
 - ❖ In **Section 175-55. General Use Standards**, add the following new provision at the end:
I. Conditional uses and special exceptions for new subdivisions. In cases where a conditional use or special exception is needed to develop a lot located in a proposed new subdivision, the conditional use or special exception needed for that lot shall be obtained prior to the approval of a subdivision containing that lot.
 - ❖ Within **Section 175-56. General Dimensional Standards**, change title in 175-56. F. from “*Calculation of usable area.*” to “*Calculation of Usable Area in Conservation Subdivisions.*”
 - ❖ Within **Section 175-56. General Dimensional Standards**, add language as shown in Subsection F. 1. and add new Subsection H:
- F. 1.** All *areas of surface water, wetlands*, very poorly drained, poorly drained, and somewhat poorly drained soils as identified on the HISS.

H. Calculating Lot Area and Density

No areas of rivers, perennial streams, lakes, ponds, tidal waters, and wetlands could toward minimum lot size and density requirements under this ordinance. These water bodies are measured from the reference line (See definitions).

- ❖ Make all other changes in the ordinance, as appropriate, including in the Table of Contents to reflect the replacement of the WCOD and SPOD with the consolidated WSOD.

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.

ARTICLE XIV
SHORELAND PROTECTION OVERLAY DISTRICT

175-69. Purpose.

The Shoreland Protection Overlay District (SPOD) is an overlay district intended to protect the quality of the Town's surface waters in order to promote public health and safety, maintain wildlife habitat, and conserve and protect shoreline and upland resources. This is accomplished by maintaining and enhancing natural forests and shoreland habitat and buffers. The district is intended to implement and expand upon the provisions of the Comprehensive Shoreland Protection Act, RSA 483-B. The provisions of this article are intended to:

- A. Protect the water quality of Great and Little Bays, the Oyster and Lamprey Rivers, and the Town's other surface waters by managing stormwater runoff, siltation and sedimentation, and the construction or alteration of buildings and structures in proximity to these resources;
- B. Minimize the potential for the pollution of these water bodies;
- C. Protect wildlife and fisheries habitats and travel ways;
- D. Conserve the natural beauty and scenic quality of the shoreland; and
- E. Allow uses of the land adjacent to these water bodies that are consistent with these objectives.

175-70. Applicability.

The provisions of the SPOD shall apply to all land within 250 feet of the reference line of Great and Little Bays, the Oyster River, the Lamprey River, Durham Reservoir, Moat Island Pond, Johnson and Bunker Creeks, and Follett's Brook including the tidal sections of their tributary streams; and within 75 feet of all other perennial brooks. These water bodies are designated on the Durham Shoreland Protection Overlay District Map, which is based on United States Geological Survey quadrangle maps covering the Town of Durham. (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 activities within or in proximity to protected water resources.)

The provisions of this article apply in addition to any state requirements for shoreland areas or other state approvals or permits. 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.

175-71. Permitted Uses in the SPOD.

- A. Notwithstanding the uses permitted in the underlying zoning district, the following uses shall be allowed without a permit in the SPOD provided they do not alter the surface condition or configuration of the land, do not obstruct or alter the natural flow or infiltration of surface or ground water, and comply with the regulations of the SPOD:
 - 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" and other native or non-native, non-invasive vegetation in conjunction with the landscaping of a lot;

2. The installation and observation of monitoring wells;
 3. Conservation activities;
 4. Accessory agriculture subject to the performance standards of 175-75.1. A and B;
 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 175-75.1, A.
 7. Forestry in accordance with Performance Standard 175-75.1.C.
 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. Aquaculture.
 11. 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 SPOD only if they are permitted in the underlying zoning district and 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 shoreland. 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;
 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. The control of aquatic weeds by harvesting;
 8. The control of exotic weeds in accordance with RSA 487:17;
 9. The construction of nature trails and paths.
 10. Grading of the site where grading within the SPOD is necessary to accommodate an allowed structure located outside of the SPOD.

175-72. Conditional Uses in the SPOD.

- A. The following uses, including any necessary grading, shall be permitted as conditional uses in the SPOD provided that the use is allowed in the underlying zoning district and the Planning Board determines that the criteria in 175-72. 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 subject to the performance standards of 175-75.1. A and B;
 3. The construction or expansion of a non-residential or multi-unit building or structure;
 4. Accessory buildings and structures other than those allowed as permitted uses;
 5. Outdoor recreational facilities that do not require the construction of buildings or other structures.
- B. The Planning Board shall approve a Conditional Use Permit for a use in the SPOD 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 SPOD 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 water resource 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 water resource 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.

175-73. Prohibited Uses in the SPOD.

Any use that is not identified as a permitted use in 175-71 or a conditional use in 175-72 shall be a prohibited use. Notwithstanding this limitation, the erection of a structure or septic system on an existing lot within the SPOD may be permitted by special exception in accordance with the provisions and standards of 175-29.B.

The following uses are deemed to pose a particular threat to the water quality of the adjacent shoreland or waterbody or downstream waterbodies and are prohibited in the SPOD even if they are permitted or conditional uses in the underlying zoning district:

- A. the establishment or expansion of salt storage yards;
- B. automotive junk or salvage yards;

- C. the storage or handling of hazardous wastes;
- D. the bulk storage of chemicals, petroleum products, or hazardous materials;
- E. use of any fertilizer, pesticide, or herbicide except in conjunction with accessory or commercial agriculture as provided for in 175-75.1. B.;
- F. the processing of excavated materials;
- G. the dumping of snow or ice removed from roads or parking lots;
- H. the disposal, handling, or processing of solid wastes including transfer stations, recycling facilities, and composting facilities;
- I. animal feedlots;
- J. the disposal of septage or other liquid or leachate wastes except for an approved septic system;
- K. construction on upland slopes which exceed 15 percent;
- L. dumping, spreading or any other application or use of treated soils or sludge from a sewage treatment plant.
- M. Freestanding solar energy systems.

175-74. Dimensional Requirements.

All land, buildings, and structures to be used, erected, altered, enlarged, or moved within the SPOD shall be in accordance with the dimensional standards of the underlying zoning district except as modified and required by this section.

A. *Shoreland Setback of Buildings and Structures*

Any new building or structure or any enlargement or modification of an existing building or structure shall be set back from the reference line of the waterbody as follows:

1. Great and Little Bays, the Oyster River, the Lamprey River, Durham Reservoir, Moat Island Pond, Johnson and Bunker Creeks, and Follett's Brook including the tidal sections of their tributaries 125 feet
2. All other perennial streams except College Brook and Pettee Brook: 75 feet
3. College Brook and Pettee Brook: 25 feet

This shoreland setback provision shall not apply to water dependent structures, nor to permitted uses that are specifically listed in 175-71, nor conditional uses that are specifically listed in 175-72 other than principal and accessory buildings and structures. Such a use shall be set back the maximum practical distance from the reference line of the waterbody as determined by the Zoning Administrator, or in the case of conditional uses, by the Planning Board in consultation with the Conservation Commission. Septic systems shall be governed by Section B. below.

B. *Septic Setbacks*

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

1. Great and Little Bays, the Oyster River, the Lamprey River, Durham Reservoir, Moat Island Pond, Johnson and Bunker Creeks, and Follett's Brook including the tidal sections of their tributaries: 125 feet

2. All other perennial streams:

75 feet

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 waterbody 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 shoreland septic system setback, the system shall be located to provide the maximum setback possible as determined by the Zoning Administrator and shall employ the best available technology.

C. *Use of Shoreland in Calculating Lot Area and Density*

Land within the SPOD may be used to meet the minimum lot area, minimum lot size, or maximum density provisions of the underlying zoning.

D. *Shoreland Frontage*

Any single lot that abuts a waterbody in the SPOD shall have a minimum of 200 feet of shoreland frontage except in zoning districts where a lesser length of frontage or none is specified in the Table of Dimensions. If such a lot contains more than 1 dwelling unit and is served by on-site sewage disposal, the lot shall have an additional 50 feet of shoreland frontage per dwelling unit.

175-75. Coordination with Other Districts

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

175-76. Performance Standards in the SPOD

All buildings and structures shall be erected, altered, enlarged, or moved and all land within the SPOD shall be used in accordance with the following specific performance standards:

A. *Natural Woodland for Shoreland Development*

The preservation of natural shoreland vegetation is intended to stabilize banks to prevent erosion, maintain wildlife habitats, minimize pollution of the water and preserve the scenic quality of shoreline properties.

Where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line or for the full width of the SPOD if the district is less than 150 feet in width. The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural conditions of the protected shoreland.

Where a natural woodland buffer does not exist, a naturally vegetated buffer strip at least 50 feet in width, or the full width of the SPOD if the district is less than 50 feet in width, shall be maintained adjacent to the reference line. Within the buffer strip, naturally occurring vegetation shall be maintained and encouraged. No new lawn, garden, or landscape areas

shall be created within the buffer strip but existing lawns may be allowed to remain provided that a 25-foot-wide strip adjacent to the shore is not mowed and is allowed to reestablish naturally occurring vegetation.

Within the buffer, the following standards shall apply:

1. Selective cutting of trees and other vegetation other than ground cover shall be permitted provided that a healthy, well distributed stand of trees and other vegetation is maintained. No trees over 6 inches in DBH [19 inches in circumference] shall be cut within the natural woodland buffer. Not more than 50 percent of the basal area of trees, nor more than 50 percent of the total number of saplings shall be removed in any 20-year period. A healthy, well distributed stand of trees, saplings, shrubs and ground covers and their living undamaged root systems shall be left in place.
2. Existing vegetation under 3 feet in height including ground cover shall not be removed except to provide for a single point of access to the shoreline as provided for in G. below, and in case of disease as provided for in 5. below.
3. No cleared opening in the forest canopy shall be created with a projected surface area of greater than 250 square feet as measured from the outer limits of the tree crown unless a building is allowed within the buffer strip. In such case, a cleared opening for the building site may be created but the cleared opening shall not extend more than 25 feet outward from the building.
4. Stumps and their root systems which are located within 50 feet of the reference line shall be left intact. The removal of stumps and roots in conjunction with beaches or docks may be permitted with the approval of the Conservation Commission based upon a determination that the removal in combination with mitigation activities will not increase the potential for erosion.
5. Dead, diseased, or damaged trees, saplings, or ground covers may be removed with prior approval of the Conservation Commission, in consultation with the Tree Warden. The stumps and root systems of the removed trees shall not be disturbed and shall remain in place. If such removal results in the creation of cleared openings, these openings shall be replanted with native species unless existing new growth is present. Dead and living trees that provide dens and nesting places for wildlife are encouraged to be preserved.
6. The application of pesticides, herbicides, and fertilizers within the buffer is prohibited except in conjunction with allowed agricultural activities. In the case of allowed agriculture, no fertilizers, pesticides, or herbicides shall be applied within 75 feet of the reference line.

B. *Agriculture*

In no case shall any soil disturbance or animal grazing occur within 75 feet of the reference line. No fertilizers (including manure), pesticides, or herbicides shall be applied within 75 feet of the reference line. Any commercial agricultural activity within the SPO (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 Natural Resources Conservation Service as demonstrating Best Management Practices.

B. *Forestry*

Any forestry activity within the SPO shall be conducted in accordance with a forest management plan prepared by a New Hampshire state licensed professional forester and

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 “Good Forestry in the Granite State” (DRED). In no case shall any harvesting or clearing, except for the removal of dead or diseased trees, occur within 50 feet of the reference line. If there is conflict among the standards, the most restrictive shall apply.

C. *Sedimentation and Erosion Control*

All activities and the use of buildings, structures, and land within the SPOD 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, and to prevent the release of surface runoff across exposed mineral soils. All activities shall be carried out in accordance with a stormwater management and erosion control plan that incorporates Best Management Practices and is approved by the Strafford County Natural Resources Conservation Service.

D. *Inspection of Nonconforming Septic Systems*

When a property with a septic system that does not conform to the setback requirements of 175-74.B is sold or otherwise transferred, the septic system shall be inspected by the Town’s Code Enforcement Officer and, if inadequate, replaced prior to the transfer of the property. If it is replaced it shall be consistent with the setback requirements in 175-74, unless deemed by the Code Enforcement Officer to be unreasonable due to the site or soil conditions.

E. *Access to the Shorefront*

One point of access to the shorefront may be developed on any lot. Such access shall be limited to a maximum of 20 feet in width.

F. *Docks and Piers In or Over the Water*

If otherwise permitted in the District, a maximum of 10 percent of the frontage of the lot on the waterbody, but no greater than 50 feet of frontage may be used for a boat dock or ramp (excluding seasonal, temporary docks or ramps). Access to the facility shall be located on soils suitable for such use and shall be designed, constructed, and maintained to minimize erosion. The facility shall comply with all applicable federal, state, and local requirements.

**PROPOSED CHANGES FROM CURRENT WETLAND CONSERVATION OVERLAY DISTRICT AND
SHORELAND PROTECTION OVERLAY DISTRICT**

Revised June 18, 2025

Issues	Current Provisions	Proposed Changes
Ordinances combined	2 separate ordinances – Wetland Conservation Overlay District (WCOD) and Shoreland Protection Overlay District (SPOD)	1 combined ordinance – Wetland and Shoreland Overlay District (WSOD)
Order of subsections		The order of the subsections is changed
Definitions: 175-58 (<u>Section #'s given here and below refer to those in the proposed WSOD</u>)	All pertinent definitions are contained in the main Definitions article of the Zoning Ordinance	Most pertinent definitions are included in the overlay district
Purpose: 175-59		The Purpose Statement is expanded
Applicability: 175-60	175-59. A. 1. a. in WCOD includes reference to surface water	A. 1. a. removes reference to association with surface water
Applicability: 175-60		A. 2. Gives a more comprehensive list of waterbodies
Applicability: 175-60		E. Requires that photographs be provided
Applicability: 175-60 Buffers. <u>See below</u>		
Buffer Requirements: 175-61		A. <u>Native and Naturalized Vegetation</u> . The requirements are laid out in 11 points that differ to a fair extent from the current provisions.
Buffer Requirements: 175-61		C. <u>Agriculture</u> . Several changes are made

Buffer Requirements: 175-61	Septic setback is 125 feet	D. Septic setback is increased to 150 feet
Buffer Requirements: 175-61		D. Eliminates 125 foot setback for sewer and septic lines (but not for leach fields and septic tanks) from the reference line though a conditional use is still required
Buffer Requirements: 175-61	There is no reference to salt use or snow storage other than prohibiting salt storage yards and dumping of snow	E. Addresses <u>salt use and snow storage</u>
Permitted Use A: 175-62	Allows planting of native or naturalized species	Allows planting of native or naturalized species in the wetland buffer, but allows planting within the wetland itself as a Permitted Use B
Permitted Use A: 175-62	Removal of dead, diseased, unsafe, or fallen trees	Refers to Section 175-61.A. for guidance more generally
Permitted Use A: 175-62	Any activity related to a pier or dock is allowed as a Permitted Use A	12. Activity related to a <u>pier or dock</u> , other than maintenance, is allowed as a Permitted Use B
Permitted Use A: 175-62	Allows accessory agriculture	Allows accessory agriculture and agriculture as a principal use
Permitted Use A: 175-62	Allows solar energy to be installed on a building	Removes this item though it would be allowed like anything being added onto an existing building that does not affect the ground (e.g. skylights and shutters). Could be added back
Permitted Use A: 175-62		Unpaved trails added
Permitted Use B. 175-63		Planting of native or naturalized species within a wetland is a Permitted Use B rather than a Permitted Use A
Permitted Use B. 175-63		5. Added expansion of <u>single family houses</u>
Permitted Use B. 175-63		10. Adds <u>fences</u>
Permitted Use A: 175-63	Any activity related to a pier or dock is allowed as a Permitted Use A	11. Activity related to a <u>pier or dock</u> , other than maintenance, is allowed as a Permitted Use B

Permitted Use B. 175-63	Aquaculture is allowed as a Permitted Use A in SPOD	12. <u>Aquaculture</u> is changed to Permitted Use B
Permitted Use B. 175-63		13. Adds allowance for departure from standards under Native and Naturalized Vegetation section.
Permitted Use B. 175-63		14. Allows for miscellaneous appropriate items to be covered
Permitted Use B. 175-63	Three criteria are listed	The criteria are consolidated into two criteria and rephrased.
Permitted Use B. 175-63		Clarifies process for Conservation Commission review
Conditional Uses. 175-64. A. 1.	A single-family house is not allowed in the overlay district.	A single family house is allowed by conditional use but must be set back at least 150 feet or the buffer width, whichever is less.
Conditional Uses. 175-64		A. 2. Adds language related to <u>culverts</u>
Conditional Uses. 175-64		A. 4. <u>Slopes</u> . Does not allow accessory structures on slopes exceeding 20%
Conditional Uses. 175-64	175-61. A. 5. Allows by outdoor recreation facilities by conditional use except for structures	<u>Outdoor recreational facilities</u> . Does not allow anywhere in WSOD
Conditional Uses. 175-64		D. Clarifies process for <u>Conservation Commission review</u>
Conditional Uses. 175-64. E.	The review follows the same procedure for other conditional uses.	Four elements of the general conditional use process would not apply to make the review process less burdensome: the 8 general criteria, notice to property owners within 300 feet, placement of a sign on the property, and a supermajority of 5 to approve a conditional use.
Special Exception for Single Family in the WSOD on a vacant lot where construction is not practical 175-65	Now contained in Article IX - Nonconformance	Moved to the WSOD, slightly reworded

Prohibited Uses. 175-66	There are no listed prohibited uses in the WCOD.	7. <u>Dumping of snow</u> . Clarifies in that dumping of snow refers to snow from off-site locations
Prohibited Uses. 175-66	SPOD prohibits construction on slopes exceeding 15%	Removes this prohibition but adds provision about slopes under Conditional Uses for accessory uses, above.
Challenge to Wetland Classifications. 175-68		Clarifies the process and designates Town Planner rather than Zoning Administrator to oversee process.
Variance applications. 175-69		For applications pertinent to the WSOD provides that the application be forwarded to the Conservation Commission to offer comments
Enforcement. 175-71		Adds provision addressing enforcement
Appendix and resources	Only a few resources included in the body of the ordinance	Numerous resources included in an Appendix organized alphabetically by topic
<u>Buffers</u>		
Bogs, prime wetlands, and rare and exemplary wetland communities	150 feet	200 feet
Vernal pools	100 feet	150 feet
Other non-tidal wetlands - R and RC zones	100 feet	100 feet
Other non-tidal wetlands – all other zones except for Core Commercial	75 feet	100 feet
Other non-tidal wetlands – Core Commercial zone	75 feet	30 feet
Tidal wetlands	100 feet	330 feet
Tidal waters – Great and Little Bays, Oyster River Johnson Creek, Bunker Creek, Bellamy River	125 feet	330 feet

Lamprey River and Durham Reservoir	125 feet	200 feet
Other perennial non-tidal rivers and streams including the Oyster River above the dam, but excluding College Brook and Pettee Brook	75 feet	150 feet
College Brook and Pettee Brook in all zones other than Core Commercial	25	100
College Brook and Pettee Brook in Core Commercial	25 feet	30 feet
Native and Naturalized Vegetation		This aspect of the buffer will extend for a width of 150 feet or the stated width of the buffer whichever is less. The current ordinance includes the same provision.