

**ARTICLE XIII
WETLAND CONSERVATION OVERLAY DISTRICT**

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

The Wetland Conservation Overlay (WCO) District 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 WCO District 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 three thousand (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:

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| a. bogs, prime wetlands, and rare and exemplary wetland communities: | 150 feet |
| b. all other tidal wetlands: | 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). 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.

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.

175-60. Permitted Uses in the WCO District.

A. Notwithstanding the uses permitted in the underlying zoning district, the following uses shall be allowed without a permit in the WCO District 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 WCO district:

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.

B. The following uses or activities shall be permitted in the WCO District if they are permitted in the underlying zoning district provided that the Zoning Administrator issues a permit for the activity after the Planning Board, with the advice of the Conservation Commission, determines that appropriate erosion control measures will be used, any disturbed area will be restored, and the activity will be conducted in a manner that minimizes any impact on the wetland:

1. The installation of private water supply wells serving a use on the lot;
2. Water impoundments with a surface area of less than ten thousand (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 three thousand (3,000) square feet;
4. Temporary crossings for the maintenance of utility pipes or lines;
5. Temporary coffer dams associated with the repair or replacement of existing structures;
6. Seasonal docks;
7. The repair or replacement of existing retaining walls;
8. Decks with an area of less than two hundred square feet provided that they are raised above the ground in such a manner as to permit the natural flow of any surface water;
9. The maintenance or replacement of existing docks or docking structures;
10. The control of aquatic weeds by harvesting;
11. The control of exotic weeds in accordance with NH RSA 487:17;
12. The construction of nature trails and paths.

175-61. Conditional Uses in the WCO District.

A. The following uses shall be permitted as conditional uses in the WCO District provided that the use is allowed in the underlying zoning district and a Conditional Use Permit is granted by the Planning Board in accordance with Article VII:

1. The construction of streets, roads, access ways, 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 commercial or office-residential 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 WCO District only if it finds, with the advice of the Conservation Commission, that all of the following standards have been met in addition to the general standards for conditional uses and any performance standards for the particular use:

1. There is no alternative location on the parcel that is outside of the WCO District that is feasible for the proposed use;
2. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities as determined by the Planning Board;
3. The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the wetland, and mitigation activities will be undertaken to counterbalance any adverse impacts; and
4. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the Conditional Use Permit.

175-62. Prohibited Uses in the WCO District.

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.

Notwithstanding this limitation, the erection of a structure or septic system on an existing lot within the Wetlands 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 WCO District is also subject to the provisions of an underlying zone. Where there is conflict among the provisions of the WCO District, 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 may be used to satisfy minimum lot sizes or the minimum usable area per dwelling unit requirement.

175-65. Performance Standards in the WCO District.

All buildings and structures shall be erected, altered, enlarged, or moved and all land within the WCO District 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 WCO District. 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 WCO District, a buffer of the maximum possible width as set forth in 175-75.1 shall be provided. No soil disturbance shall occur within fifty (50) feet of the reference line. Existing lawns within the upland buffer may be allowed to remain provided that a twenty-five (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 WCO District 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 seventy-five (75) feet of the reference line of the wetland. Commercial agriculture within the WCO District 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 for Agriculture" (New Hampshire Department of Agriculture, 1993) and "Best Management Wetlands Practices for Agriculture" (New Hampshire Department of Agriculture, 1993).

D. Forestry

Any forestry activity-within the WCO District shall be in accordance with the Basal Area Law RSA 227-J:9 and shall use as guidance for best forest management practices the “Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire” Department of Resources and Economic Development (DRED) 2004 as amended, Best Management Practices for Forestry: Protecting New Hampshire’s Water Quality 2005 as amended, “Good Forestry in the Granite State” (DRED).

E. Trails

Trails within the WCO District 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 WCO 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 born 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.

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.