

Article 10 Environmental Protection Standards

Section 10.1010 Wetlands Protection

Section 10.1020 Earth Products Removal and Placement

Section 10.1010 Wetlands Protection

10.1011 Purpose

The purposes of this Section are:

- (1) To maintain, and where possible improve, the quality of surface waters and ground water by controlling the rate and volume of stormwater runoff and preserving the ability of wetlands to filter pollution, trap sediment, retain and absorb chemicals and nutrients, and produce oxygen.
- (2) To prevent the destruction of, or significant changes to, wetlands, related water bodies and adjoining land which provide flood protection, and to protect persons and property against the hazards of flood inundation by assuring the continuation of the natural or existing flow patterns of streams and other water courses within the City.
- (3) To protect, and where possible improve, potential water supplies and aquifers and aquifer recharge areas.
- (4) To protect, and where possible improve, wildlife habitats and maintain ecological balance.
- (5) To protect, and where possible improve, unique or unusual natural areas and rare and endangered plant and animal species.
- (6) To protect, and where possible improve, shellfish and fisheries.
- (7) To prevent the expenditure of municipal funds for the purpose of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands.
- (8) To require the use of best management practices and low impact development in and adjacent to wetland areas.

10.1012 Relationship to Other Regulations

- 10.1012.10 The provisions and criteria set forth in this Section are in addition to the provisions of applicable state and federal laws and regulations, other sections of this Zoning Ordinance, and other local ordinances and regulations.

- 10.1012.20 Where any provision of this Section conflicts with a state or federal law or regulation, another section of this Zoning Ordinance, or another local ordinance or regulation, the more restrictive provision shall apply.
- 10.1012.30 Nothing in this Section shall permit a use or activity which is contrary to any other provision of the Zoning Ordinance.
- 10.1012.40 Notwithstanding any other provisions of the Zoning Ordinance, the City of Portsmouth and its administrative and operating agencies and instrumentalities shall comply with the provisions of this Section.

10.1013 Jurisdictional Areas

The provisions of this Section 10.1010 apply to the following jurisdictional areas:

- 10.1013.10 Any inland wetland, other than a vernal pool, that is 10,000 square feet or more in area;
- 10.1013.20 Any vernal pool regardless of area.
- 10.1013.30 Any non-tidal perennial river or stream.
- 10.1013.40 The tidal wetlands of Sagamore Creek, Little Harbour, North Mill Pond, South Mill Pond and part of the Piscataqua River, defined as follows:
- (a) Sagamore Creek: Bounded by the easterly side of Peverly Hill Road and the southerly side of Greenleaf Avenue as these cross Sagamore Creek, and extending along the Creek to Little Harbour.
 - (b) Little Harbour: Extending along the Little Harbour shoreline from the municipal line with the Town of Rye to the southerly side of New Castle Avenue, and including Goose Island, Belle Island, Pest Island and that portion of Shapleigh Island lying south of New Castle Avenue.
 - (c) North Mill Pond: Extending along the entire shoreline of North Mill Pond between Bartlett Street and Market Street.
 - (d) South Mill Pond: Extending along the entire shoreline of South Mill Pond west of the tide gate at Pleasant Street.
 - (e) Piscataqua River: Extending along the shoreline of the Piscataqua River from the northwest side of the I-95 bridge up to and including the waterfront parcel fronting on Porpoise Way.

10.1014 Identification and Delineation of Wetlands and Wetland Buffers

10.1014.10 Wetlands

- 10.1014.11 Wetlands shall be identified by use of the Federal Manual and/or Field Indicators, and shall be delineated by on-site inspection of soil types,

vegetation, and hydrology by a certified wetland scientist at a time when conditions are favorable for such determination.

- 10.1014.12 A created wetland shall be considered a wetland for the purposes of this section.
- 10.1014.13 Any area which may have been a wetland but was filled prior to January 1, 1970 or pursuant to properly issued federal, state and local permits granted prior to the adoption of this Ordinance shall be judged according to the conditions existing at the time an application for a building permit or subdivision is filed or submitted.

10.1014.20 Wetland Buffers

- 10.1014.21 The purpose of a wetland buffer is to reduce erosion and sedimentation into the adjacent wetland, vernal pool or water body, to aid in the control of nonpoint source pollution, to provide a vegetative cover for filtration of runoff, to protect wildlife habitat, and to help preserve ecological balance.
- 10.1014.22 The required wetland buffer for a jurisdictional wetland or water body shall be defined as all land within 100 feet of the jurisdictional area.
- 10.1014.23 Wetland buffers, including vegetated buffer strips and limited cut areas, shall be parallel to and measured from the reference line for the applicable jurisdictional area on a horizontal plane.
- (1) Inland wetland buffers shall be measured from the edges of inland wetlands and surface water bodies.
 - (2) Tidal wetland buffers shall be measured from the edges of tidal wetlands and highest observable tide lines.

10.1015 Notification to Planning Director

Notice shall be provided to the Planning Director prior to any construction, demolition, tree cutting, vegetation removal, or other alteration in a wetland or wetland buffer.

10.1016 Permitted Uses

- 10.1016.10 The following uses, activities and alterations are permitted in wetlands and wetland buffers:
- (1) Any use that does not involve the erection or construction of any structure or impervious surface, will not alter the natural surface configuration by the addition of fill or by dredging, will not result in site alterations, and is otherwise permitted by the Zoning Ordinance. Examples of such uses include forestry and tree farming, wildlife refuges, parks and recreational uses, conservation and

nature trails, and open spaces as permitted or required by the Zoning Ordinance or Subdivision Regulations.

- (2) Improvements to existing public rights-of-way and sidewalks.
- (3) The construction of piers or docks, provided that all required local, state and federal approvals have been granted.
- (4) The construction of an addition or extension to a one-family or two-family dwelling that lawfully existed prior to the effective date of this Ordinance or was constructed subject to a validly issued conditional use permit, provided that:
 - (a) The footprint area of the addition or extension, together with the area of all prior such additions and extensions, shall not exceed 25 percent of the area of the footprint of the principal heated structure existing prior to the effective date of this Ordinance or constructed pursuant to a validly issued conditional use permit (this 25 percent limit shall not be based on pre-existing attached or detached garages, sheds, decks, porches, breezeways, or similar buildings or structures);
 - (b) The addition or extension shall be no closer to a wetland or water body than the existing principal structure; and
 - (c) The addition or extension shall conform with all other provisions of the Zoning Ordinance and with all other applicable ordinances and regulations of the City of Portsmouth.
- (5) The use of motor vehicles, except for all-terrain vehicles, when necessary for any purpose permitted by this Ordinance.
- (6) Emergency power generator outside the wetland and vegetated buffer strip, provided that the total coverage by equipment and any mounting pad shall not exceed 10 square feet.
- (7) Uses, activities and alterations that are consistent with a Wetland Protection Plan that has been approved by the Planning Board through the grant of a conditional use permit.
- (8) Construction of fences attached to hand driven steel posts 3" or less in diameter, outside the vegetated buffer strip and with no footings and no ground disturbance beyond the installation of the posts.

10.1016.20 Any use, activity or alteration not specifically permitted by Section 10.1016.10 above is prohibited unless authorized by the Planning Board through the grant of a conditional use permit.

- 10.1016.30 When the Planning Director reasonably believes that an existing or proposed use, activity or alteration that is not specifically permitted by Section 10.1016.10 is located in a wetland or wetland buffer, and a conditional use permit has not been granted for such use, activity or alteration, the Planning Director may require a wetland delineation complying with Section 10.1014 in order to verify the location or absence of wetlands and determine whether the use, activity or alteration requires a conditional use permit.

10.1017 Conditional Uses

10.1017.10 General

The Planning Board is authorized to grant a conditional use permit for any use not specifically permitted in Section 10.1016.10, subject to the procedures and findings set forth herein.

10.1017.20 Application Requirements

- 10.1017.21 The application shall be in a form prescribed by the Planning Board, and shall include the following information:
- (1) Location and area of lot and proposed activities and uses;
 - (2) Location and area of all jurisdictional areas (vernal pool, inland wetland, tidal wetland, river or stream) on the lot and within 250 feet of the lot;
 - (3) Location and area of wetland buffers on the lot;
 - (4) Description of proposed construction, demolition, fill, excavation, or any other alteration of the wetland or wetland buffer;
 - (5) Setbacks of proposed alterations from property lines, jurisdictional areas and wetland buffers;
 - (6) Location and area of wetland impact, new impervious surface, previously disturbed upland;
 - (7) Location and description of existing trees to be removed, other landscaping, grade changes, fill extensions, rip rap, culverts, utilities;
 - (8) Dimensions and uses of existing and proposed buildings and structures.
 - (9) Any other information necessary to describe the proposed construction or alteration.

10.1017.22 Where the proposed project will involve the temporary or permanent alteration of more than 250 sq. ft. of wetland and/or wetland buffer, the

application shall provide information about the affected wetland and wetland buffer as follows:

- (1) Up to 1,000 sq. ft. of alteration to the wetland: a wetland characterization that describes the type of wetland (e.g., emergent, scrub-shrub, forested), the percent of invasive species, and whether the wetland is seasonally flooded.
- (2) More than 1,000 sq. ft. of alteration to the wetland: a functions and values assessment equivalent to the model set forth in Appendix A of The Highway Methodology Workbook Supplement – Wetland Functions and Values: A Descriptive Approach, NAEPP-360-1-30a, US Army Corps of Engineers, New England Division, September 1999, as amended.
- (3) More than 250 sq. ft. of alteration to the wetland buffer (regardless of the amount of alteration to the wetland): a description of the 100-foot buffer including vegetation type, the percent of the buffer with invasive species, and the percent of the buffer that is paved or developed.

10.1017.2~~23~~ The application shall describe the impact of the proposed project with specific reference to the criteria for approval set forth in Section 10.1017.50 (or Section 10.1017.60 in the case of utility installation in a right-of-way), and shall demonstrate that the proposed site alteration is the alternative with the least adverse impact to areas and environments under the jurisdiction of this Ordinance.

10.1017.24 Where feasible, the application shall include removal of impervious surfaces at least equal in area to the area of impervious surface impact. The intent of this provision is that the project will not result in a net loss of pervious surface within a jurisdictional wetland buffer. If it is not feasible to remove impervious surfaces from the wetland buffer at least equal in area to the area of new impervious surface impact, the application shall include a wetland buffer enhancement plan that describes how the wetland functions and values will be enhanced to offset the proposed impact.

10.1017.25 A wetland buffer enhancement plan shall be designed to enhance the functions of the jurisdictional wetland and/or wetland buffer on the lot, and to offset the impact of the proposed project.

- (1) The wetland buffer enhancement plan shall include a combination of new plantings, invasive species removal, habitat creation areas, improved site hydrology, or protective easements provided offsite.
- (2) Where the vegetated buffer strip contains grass or non-native plantings, or is otherwise not intact, the first priority of the wetland buffer enhancement plan shall be to include revegetation of the vegetated buffer strip with native, low-maintenance shrubs and other woody vegetation.

10.1017.25 Where the proposed project involves a use, activity or alteration in a tidal wetland or tidal wetland buffer, the application shall include a living shoreline strategy to preserve the existing natural shoreline and/or encourage establishment of a living shoreline through restoration, as applicable. Said living shoreline strategy shall be implemented unless the Planning Board determines that it is not feasible.

10.1017.30 Application Review Procedure

- 10.1017.31 The application for a conditional use permit shall be submitted to the Planning Director.
- 10.1017.32 The Planning Director shall refer the application to the Conservation Commission for review and comment.
- 10.1017.33 The Planning Board or the Planning Director may require the findings of an independent New Hampshire certified wetland scientist or other additional special investigative studies, and may assess the owner reasonable fees to cover the costs of such studies and for the review of documents required by application.
- 10.1017.34 The Planning Board shall hold a public hearing on the application within 90 days of the initial submittal to the Planning Board, and shall issue a letter of decision within 10 days of the public hearing. The time requirements stated herein may be waived by the applicant.
- 10.1017.35 Public notice for public hearings shall be made in accordance with State law.
- 10.1017.36 The application process pursuant to this section may proceed prior to and/or run concurrent with the State and Federal permit processes, but the conditional use permit shall not become effective until the State and Federal permits are received.

10.1017.40 Conditional Use Approval

- 10.1017.41 The Planning Board shall grant a conditional use permit provided that it finds that all other restrictions of this Ordinance are met and that proposed development meets all the criteria set forth in section 10.1017.50 or 10.1017.60, as applicable.
- 10.1017.42 The Planning Board shall evaluate an application for a conditional use permit in accordance with *The Highway Methodology Workbook Supplement – Wetland Functions and Values: A Descriptive Approach*, NAEPP-360-1-30a, US Army Corps of Engineers, New England Division, September 1999, as amended.
- 10.1017.43 The burden of proof that the criteria required for approval of the conditional use permit exist or are met shall be the responsibility of the applicant.

10.1017.44 Economic considerations alone are not sufficient reason for granting a conditional use permit.

10.1017.45 Where new impervious surface is proposed in a wetland or wetland buffer, the submission of a plan to compensate for such new impervious surface does not guarantee that a conditional use permit will be granted.

10.1017.50 Criteria for Approval

Any proposed development, other than installation of utilities within a right-of-way, shall comply with all of the following criteria:

- (1) The land is reasonably suited to the use, activity or alteration.
- (2) There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.
- (3) There will be no adverse impact on the wetland functional values of the site or surrounding properties;
- (4) Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals; and
- (5) The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this Section.
- (6) Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.

10.1017.60 Public and Private Utilities within Rights-of-Way in Wetlands and Wetland Buffers

The installation of utilities (including power lines and pipelines) within a right-of-way in an inland wetland or wetland buffer shall comply with all of the following criteria instead of the criteria set forth in section 10.1017.50:

- (1) The proposed construction is in the public interest;
- (2) Design, construction, and maintenance methods will utilize best management practices to minimize any detrimental impact of such use upon the wetland and will include restoration of the site as nearly as possible to its original grade, condition and vegetated state;
- (3) No alternative feasible route exists which does not cross or alter a wetland or have a less detrimental impact on a wetland; and
- (4) Alterations of natural vegetation or managed woodland will occur only to the extent necessary to achieve construction goals.

10.1017.70 Expiration and Extension

- 10.1017.71 A conditional use permit shall expire one year after the date of approval by the Planning Board unless a building permit is issued prior to that date.
- 10.1017.72 The Planning Board may grant a one-year extension of a conditional use permit if the applicant submits a written request to the Planning Board prior to the expiration date. Any other extension may be granted only after a new public hearing on the reconsideration of the application.

10.1017.80 Wetland Protection Plan

10.1017.81 General

- 10.1017.811 The owner of a parcel that contains more than 5 acres and more than 5 residential structures may apply for a conditional use permit for pre-approval of multiple individual projects over a multi-year time frame by submitting a Wetland Protection Plan conforming to the requirements of this section.

10.1017.82 Submission Requirements and Procedures

- 10.1017.821 Plan Contents: A Wetland Protection Plan shall include the following information:
- (1) Wetland delineation, wetland buffers (100 feet), limited cut areas (50 feet) and vegetated buffer strips (25 feet).
 - (2) Existing buildings, structures, streets, driveways and other site improvements.
 - (3) Calculations of existing impervious surface areas (total and within the wetland buffer). For a manufactured housing park these calculations shall be provided for each dwelling site and for the park as a whole.
 - (4) Proposed protective measures (e.g., rain gardens, tree plantings, shrub plantings).
 - (5) Calculations of areas of protective measures and proposed or potential future impervious surfaces.
- 10.1017.822 Initial Submission, Review and Approval Procedures: The initial Wetland Protection Plan shall be submitted to the Planning Department and shall be processed following the procedures for an application for a conditional use permit under Section 10.1017.30 and 10.1017.40.
- 10.1017.823 Effect of Plan Approval: The grant of a conditional use permit for a Wetland Protection Plan represents an overall pre-approval of impacts within the wetland buffer as

described on the Plan, subject to the submission of individual site plans in connection with application for a building permit that represents a change or increase in impervious surface within the wetland buffer.

10.1017.824 Permit Site Plans:

- (1) Following the approval of a Wetland Protection Plan, each application for a building permit that proposes a relocation of or increase in impervious surface within the wetland buffer shall be accompanied by a permit site plan showing the specific impervious surface changes and the specific protective measures proposed as compensation. Said protective measures shall be completed prior to or concurrently with the proposed impervious surface impact for which they provide compensation.
- (2) The Planning Director may approve a permit site plan that is consistent with an approved Wetland Protection Plan.
- (3) If the Planning Director determines that a permit site plan proposes a significant change from the approved Wetland Protection Plan, the owner shall submit an application to the Conservation Commission and Planning Board for an amendment to the conditional use permit.

10.1017.825 Plan Updates: After every 10 building permits have been issued under an approved Wetland Protection Plan, whether authorized administratively or by conditional use permit, the owner shall submit an updated Wetland Protection Plan showing the new existing site conditions and including updated calculations. The updated Plan shall also serve as an application for administrative site plan approval for all site changes that have been made since the previously approved Plan or Plan amendment.

10.1017.83 Wetland Protection Plan Standards

10.1017.831 No net increase in impervious surface within the wetland buffer: Buildings, structures or other impervious surfaces may be constructed, expanded or relocated within the wetland buffer provided that (1) no new impervious surface shall be within 25 feet of the wetland boundary, and (2) any new area converted to impervious surface shall be compensated for at a 1:1 ratio by the conversion of existing impervious surface within the wetland buffer to vegetated open space (lawn or planted areas). Such

compensatory open space does not need to be shown on the approved Wetland Protection Plan, but shall be shown on the permit site plan submitted with the building permit application.

- 10.1017.832 Net increase in impervious surface within the wetland buffer with compensation: Buildings, structures or other impervious surfaces may be constructed, expanded or relocated within the wetland buffer provided that (1) no new impervious surface shall be within 25 feet of the wetland boundary, and (2) the net increase in impervious surface shall be compensated for by protective measures that are shown on the approved Wetland Protection Plan at the following ratios:

Protective Measure	Ratio of protective measure area to net impervious surface area	
	25' -50' from wetland	50' -100' from wetland
Rain garden	3.0:1	2.0:1
Tree plantings	3.0:1	2.0:1
Shrub plantings	3.0:1	2.0:1

- 10.1017.833 Any increase in permanent impervious surface permitted through the provision of compensating protective measures shall also permit a temporary impact within the wetland buffer equal to two times the area of the permanent impact.

10.1018 Performance Standards

10.1018.10 Stormwater Management

All construction activities and uses of buildings, structures, and land within wetlands and wetland buffers shall be carried out so as to minimize the volume and rate of stormwater runoff, the amount of erosion, and the export of sediment from the site. All such activities shall be conducted in accordance with Best Management Practices for stormwater management including but not limited to:

1. *New Hampshire Stormwater Manual*, NHDES, current version.
2. *Best Management Practices to Control Non-point Source Pollution: A Guide for Citizens and City Officials*, NHDES, January 2004.

10.1018.20 Vegetation Management

- 10.1018.21 The required wetland buffer includes two smaller areas where additional standards and criteria apply: a vegetated buffer strip and a limited cut

area. The width of these areas shall be based on the type of jurisdictional area, as follows:

Jurisdictional Area	Vegetated Buffer Strip	Limited Cut Area
Vernal pool	0' - 50'	50' - 75'
Inland wetland, other than vernal pool	0' - 25'	25' - 50'
Non-tidal perennial stream or river	0' - 25'	25' - 75'
Inter-tidal area or tidal wetland as specified in section 10.1013.40	0' - 25'	25' - 50'

10.1018.22 If the vegetated buffer strip specified in Section 10.1018.21 contains an area that has a slope of 10% or more for at least 10 feet in a direction perpendicular to the edge of the jurisdictional area, the required width of the vegetated buffer strip shall be increased to 55 feet from the edge of a vernal pool and to 40 feet from the edge of any other wetland.

10.1018.23 Removal or cutting of vegetation:

- (1) Chemical control of vegetation is prohibited in all areas of a wetland or wetland buffer.
- (2) The removal or cutting of vegetation is prohibited in a wetland or vegetated buffer strip, except that non-chemical control of plants designated by the State of New Hampshire as "New Hampshire Prohibited Invasive Species" is permitted.
- (3) The removal of more than 50% of trees greater than 6" diameter at breast height (dbh) is prohibited in the limited cut area.

10.1018.24 Fertilizers:

- (1) The use of any fertilizer is prohibited in a wetland, vegetated buffer strip or limited cut area.
- (2) The use of fertilizers other than low phosphate and slow release nitrogen fertilizers is prohibited in any part of a wetland buffer.

10.1018.25 Pesticides and herbicides:

The use of pesticides or herbicides is prohibited in a wetland or wetland buffer, except that application of pesticides by a public agency for public health purposes is permitted.

Section 10.1018.30 Porous Pavement in Wetland Buffer

10.1018.31 All new pavement installed in a wetland buffer shall be porous pavement. The Planning Board may allow exceptions to this requirement where it can be demonstrated that the height of ground water, condition of soil, or other factors as described in the application are not appropriate for porous pavement.

10.1018.32 An application that proposes porous pavement in a wetland buffer shall include a pavement maintenance plan addressing erosion control, periodic removal of sediment and debris from the porous surfaces, snow management, and repairs.

10.1018.40 Wetland Boundary Markers

Permanent wetland boundary markers shall be shown on the plan submitted with an application for a conditional use permit and shall be installed during project construction.

Light trespass

The shining of light produced by a luminaire beyond the boundaries of the property on which it is located.

Lighting fixture

The assembly that houses the lamp or lamps.

Outdoor lighting

The illumination of an outside area or object by any man-made device located outdoors that produces light by any means.

Temporary lighting

Lighting which will not be used for more than one thirty (30) day period with at least 180 days passing before being used again. Temporary lighting is intended for uses which by their nature are of limited duration including, but not limited to, holiday decoration, civic events, or construction projects.

Light truck

A truck of 10,000 pounds gross vehicle weight rating or less, including a pickup, van, truck-based station wagon or sport utility vehicle.

Live/work unit

A dwelling unit which includes a nonresidential use that is otherwise allowed in the zoning district in which the unit is located and that is operated by the resident of the dwelling unit, and which complies with the following standards:

- (a) The live/work unit shall not exceed 3,000 sq. ft. gross floor area.
- (b) The nonresidential area shall be between 25 percent and 50 percent of the gross floor area of the unit.
- (c) The nonresidential area shall be limited to the first or main floor only of the live/work unit.
- (d) No workers shall be employed or occupied in the nonresidential use other than residents of the live/work unit.
- (e) The live/work unit shall not include any high hazard use, and shall not include any storage use exceeding 10 percent of the space dedicated to nonresidential activities.

Living shoreline

Any shoreline management system using native vegetation, alone or in combination with offshore sills, to stabilize the shoreline without interrupting the natural water/land continuum to the detriment of natural shoreline ecosystems.

Lot

A single parcel of land in the same ownership throughout as shown or defined on a recorded instrument or defined by metes and bounds and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of law to be adequate as a condition of the issuance of a building permit for building on such land.