

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 Jurisdictional ~~w~~Wetlands shall be identified by use of the methodologies in the most current edition(s) of the Federal Manual and/or **Field Indicators**, as may be amended and supplemented from time to time 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. Such identified wetlands shall constitute a wetland delineation of any jurisdictional wetland under this section.

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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 is for a jurisdictional wetland or water body shall be~~ defined as all land within 100 feet of ~~the any~~ jurisdictional ~~area wetland or water body~~.

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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

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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 outside the **vegetated buffer strip**, provided that any posts are no wider than 3" in any dimension, and that there are 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.

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- 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 **development** activities and **uses**;
- (2) Location and area of all jurisdictional areas (**vernal pool**, **inland wetland**, **tidal wetland**, river or stream) on the **lot** and, to the extents practical, within 250 feet of the **lot**;
- (3) Location and area of **wetland buffers** on the **lot**;
- (4) Description of all 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) Locations of any particular site features or constraints that provide support for the proposed **development** activities including, without limitation, bedrock, significant grades, contaminated soils or waters; other development that may exist between the proposed **development** activity and the

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wetland or wetland buffer; and any other elements specific to the proposed development which provide a basis for a conditional use permit under this section.

(10) A Wetlands Protection Plan;

(11) Information as required by this Article, based on the amount of alteration proposed; and,

(9)(12) Any other information necessary to describe the proposed ~~construction~~ development activity or alteration.

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

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

- ~~=(1) More than 250 sq. ft. and less than 1,000 sq. ft. of alteration to the wetland buffer (regardless of the amount of alteration to the wetland): (a) 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; and, (b) :~~
- ~~(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) (1) For 1,000 sq. ft. or 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.
- ~~(2) (1) 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.~~

10.1017.23 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 **existing impervious surfaces** **in an amount** at least equal in area to the area of **any new impervious surface area** 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~~

- ~~(1) If it is not feasible to remove existing impervious surfaces from the wetland buffer in an amount 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.~~
- ~~(2) The intent of this provision is that the approval of the project will not reduce the amount of pervious surface within a jurisdictional wetland buffer.~~

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.

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- (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.

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(2) 10.1017.26 Where the proposed **development project** activity 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 In addition to the wetlands mapping required for every application under this section, 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, or within 10 days of a later meeting if the matter is continued. 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.

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- 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~~ except: (1) development proposals which propose to improve existing conditions of a previously developed site by reducing existing wetlands or wetlands buffer impacts or improving environmental quality; or (2) 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.

10.1017.51 Improvements to Existing Conditions on Previously Developed Sites

A development proposal that proposes to reduce existing wetlands or wetlands buffer impacts or to improve environmental quality using state of the practice methods for such improvements on a previously developed site may be considered by the Planning Board based on the conditions of the site or sites under consideration, and the following provisions instead of those set forth in section 10.1017.50:

- a) The prior history of the use of the site and adjacent properties if relevant to consideration;
- b) If applicable, current environmental degradation that will be mitigated, corrected, or improved by the development proposal;
- c) Demonstration by the applicant that there will be a demonstrable improvement to overall environmental conditions if the conditional use permit is granted to allow the development proposed; and
- d) The recommendations and proposed conditions, if any, from the Conservation Commission.

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The Planning Board may require additional information, including from independent experts, under this section to allow consideration of the development proposal.

The Planning Board may grant a conditional use permit under 10.1017.51 if the Planning Board determines and overall improvement to existing conditions will be achieved by the **development** proposal.
(6)

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.

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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

10.1017.810 A Wetland Protection Plan shall be required for all **developments** containing a commercial use, or propose to redevelop a site that previously contained a commercial use that propose to impact **wetland** or **wetland buffer**.

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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

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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 Except as otherwise provided in this Article, 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 <u>net impervious surface area</u>	
	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.

10.1017.834 Any increase in permanent impervious surface, wetlands impacts or wetlands buffer impacts for development proposals containing or redeveloping a site with a commercial use shall be allowed only if approved by conditional use permit pursuant to section 10.1017.51.

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.

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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.

Article 10 Environmental Protection Standards

Section 10.1010 Wetlands Protection

Section 10.1020 Earth Products Removal and Placement

Section 10.1010 Wetlands Protection

Article 10.1010 was first established on December 18, 1995 and last updated on XXXX.

For definitions, please refer to Article 15.

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.
- (9) To assist in protecting and improving the future of Portsmouth's resiliency with regard to climate change impacts and maintaining carbon neutrality.

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.

10.1014.14 An existing connection between an **inland wetland** and a bordering **tidal wetland** shall constitute one resource for the purposes of assessing jurisdictional wetland sizes.

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 **no cut/vegetated buffer strips** and limited cut areas (See Table 10.1018.21), 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 and Sustainability Director

Notice shall be provided to the Planning and Sustainability Director prior to any construction, **demolition**, tree cutting, vegetation removal, **ground disturbance** 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 **with the exception of maintenance dredging within a previously permitted drainage swale**, 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 **no cut/vegetated buffer strip**, provided that the total **coverage** by equipment and any mounting pad shall not exceed ~~10~~**12** 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 outside the **no cut/vegetated buffer strip**, provided that any posts are no wider than 3" in any dimension, and that there are no footings and no ground disturbance beyond the installation of the posts.
- (9) Removal of trees within the **no cut/vegetated buffer strip** that are considered high risk and pose imminent danger to a structure on the property. This risk must be determined by an ISA Tree Risk Assessment Qualified Certified Arborist, or state equivalent, and approved by the Planning and Sustainability Director for each individual high-risk tree.

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. Any work completed without a permit is subject to fines and other penalties as deemed appropriate by the Planning and Sustainability Director. If a permit is sought after work has been completed within the jurisdictional areas, no other permits may be issued until the corresponding land use application has been closed out.

10.1016.30 When the Planning and Sustainability 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 and Sustainability 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) Provide a planting plan detailing species and proposed locations. Where possible, the square footage removed of natural vegetation or managed woodland shall be replanted with similar or more diverse groundcover (maintained lawn is not an acceptable groundcover), shrub, and/or trees as was existing.
- (11) Provide location and description of proposed low impact development measures and best management practices for reducing overall impact to the jurisdictional areas.

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.

- 10.1017.23 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 **If required according to Section 10.1017.24, 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, **low impact development measures**, improved site hydrology, or protective easements provided offsite.
 - (2) Where the **no cut/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.
- 10.1017.26 Where the proposed project involves a use, activity or alteration in a **tidal wetland** or **tidal wetland buffer**, the application shall **demonstrate how the proposed project is adapting to sea level rise and** includes 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.
- 10.1017.27 **Where feasible, the application shall include: wildlife corridors and habitat protection measures including but not limited to: curb cuts, slant edge curbing, amphibian tunnels and space under fences to permit wildlife passage and the use of “bird friendly” windows.**
- 10.1017.28 **Where feasible, light and noise pollution should be reduced.**

10.1017.29 Where feasible, the application shall include measures to reduce impacts from stormwater and erosion.

10.1017.30 Application Review Procedure

10.1017.31 The application for a conditional use permit shall be submitted to the Planning and Sustainability Director.

10.1017.32 The Planning and Sustainability Director shall refer the application to the Conservation Commission for review and comment.

10.1017.33 The Planning Board or the Planning and Sustainability 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.

10.1017.46 Property constraints such as setbacks, view corridors and economic considerations are not justification for needing to site a project (or portion of a project) within the wetland buffer.

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.
- (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 **no cut/vegetated buffer strip** will be returned to a natural state to the extent feasible.
- (7) Wetland boundary markers will be permanently placed on-site to mark the wetland and wetland buffer as appropriate and assist in educating the community on sensitive wetlands. Wetland boundary markers are available for purchase through the City of Portsmouth Planning & Sustainability Department and shall be installed prior to the commencement of site work.

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. **If a conditional use permit does not require a building permit, such as a restoration plan or after-the-fact permit, then the**

conditional use permit shall expire one year after the date of approval by the Planning Board unless site work has commenced on the project.

- 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 (50-100 feet) and **no cut/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 **and Sustainability** Director may approve a permit site plan that is consistent with an approved Wetland Protection Plan.
- (3) If the Planning **and Sustainability** 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 blasting is required,** (12) no new **impervious surface** shall be within **2550** feet of the **wetland** boundary, and (23) 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~~ and 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 **2550** 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'	50'-100'
	from wetland	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 **no cut/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	No Cut/Vegetated Buffer Strip	Limited Cut Area
Vernal pool	0' - 25'	50' - 75 100'
Inland wetland , other than vernal pool	0' - 25'	25 50' - 50 100'
Non-tidal perennial stream or river	0' - 25'	25 50' - 75 100'
Inter-tidal area or tidal wetland as specified in section 10.1013.40	0' - 25'	25 50' - 50 100'

- 10.1018.22 If the **no cut/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 **no cut/vegetated buffer strip** shall be increased to ~~55~~100 feet from the edge of a **vernal pool** and to ~~40~~100 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 **no cut/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 **any trees in the wetland and buffer is discouraged, and removal of trees greater than 6” diameter at breast height (dbh) more than 50% of trees greater than 6” diameter at breast height (dbh) is prohibited in the 100’ wetland buffer area limited cut area.**

10.1018.24 Fertilizers:

- (1) The use of any fertilizer is prohibited in a **wetland. buffer strip** or limited cut area.
- (2) The use of fertilizers other than low phosphate and slow release nitrogen fertilizers **in compliance with NOFA standards** 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 prior to project construction.**

10.1018.50 Snow Removal and Management in Private Parking Lots and Roadways.

An application with parking lots and/or roadways on site must designate and mark with signage in the field and on plans snow storage areas and covered salt storage outside of the 50’ wetland buffer. If snow storage areas outside of the 50’ buffer are not possible, the snow must be transported off site. A winter maintenance plan must be submitted and work must be performed by Green SnowPro certified companies.

Section 10.1020 Earth Products Removal and Placement

10.1021 Applicability and Permit Requirements

- 10.1021.10 The removal or placement of more than 100 cubic yards of sod, loam, sand, gravel or quarried stone at any premises in any 1 year shall require a permit from the Planning Board except when incidental to and in connection with the construction of a **building**, **street** or other activity authorized by this Ordinance.
- 10.1021.20 Any removal or placement of earth products shall comply with State law regardless of whether a permit from the Planning Board is required.

10.1022 Application Requirements

- 10.1022.10 An application for a permit for earth products removal or placement shall be submitted to the Planning Board in a form specified by the Board.
- 10.1022.20 The application shall be accompanied by a plan of land, prepared and stamped by a registered land surveyor or civil engineer, showing the following information for the property where the proposed removal or placement of materials is to take place and for all land located within 100 feet of the property:
 - (a) property lines;
 - (b) vegetative cover;
 - (c) all man-made features;
 - (d) existing topography by 4-foot contour intervals;
 - (e) proposed temporary and permanent drainage;
 - (f) proposed topography at 2-foot contours upon completion of the excavation project.
- 10.1022.30 The estimated quantity of material to be removed or placed and topsoil to be stripped, stockpiled and replaced shall be determined by average end area methods or as approved by the Department of Public Works.

10.1023 Criteria for Approval

The Planning Board shall grant a permit for earth products removal or placement only if a majority of the Board finds that the application complies with all of the following criteria:

- 10.1023.10 The application is complete and provides sufficient information upon which to base an action; and
- 10.1023.20 The proposed earth products removal or placement activity will not result in any hazard to the public or to **adjacent** properties; and
- 10.1023.30 The proposed earth products removal or placement activity will not create a safety hazard due to traffic or other cause; and
- 10.1023.40 The proposed earth products removal or placement activity will not result in a reduction in property values or a change in the character of a residential neighborhood.

10.1024 Conditions of Approval

- 10.1024.10 A permit for earth products removal or placement shall specify conditions pertaining to:
- (a) Control of drainage so as to prevent any adverse impact on adjoining parcels during and after work;
 - (b) Disposition of boulders, vegetation, stumps and other debris including unused material and any **structures** used in connection with the operations;
 - (c) The construction of necessary fencing to protect against hazards;
 - (d) Vegetation to remain as a visual barrier;
 - (e) Hours of operation;
 - (f) Routes for transportation of materials and method of transportation so as to minimize impact on surrounding parcels;
 - (g) **Setbacks** of the proposed removal from public rights of way and property lines shall be specified;
 - (h) The finished level and grading; and
 - (i) The placing of topsoil for purposes of seeding and planting to prevent erosion or dust.
- 10.1024.20 A permit for earth products removal, except in a stone quarry, shall specify the following additional conditions for restoring the site upon completion of excavation:
- (a) The finished slope shall not exceed a grade of 1 foot vertical distance for each 2 feet of horizontal distance unless stabilized in a manner approved by the Planning Board, which may include the use of rip-rap or retaining walls.
 - (b) Topsoil shall be placed on finished slopes to a depth of at least 6 inches and shall be seeded and planted with materials approved by the Planning Board and the Conservation Commission.
- 10.1024.30 A permit for earth products removal or placement shall require the provision of a security in a form and amount approved by the Planning Board, sufficient to guarantee completion of the work in accordance with the conditions in 10.1024.10 and 10.1024.20.

10.1025 Performance Standards

- 10.1025.10 Earth products removal and placement activities shall respect the existing elevations at all **lot lines** with abutting properties, and shall not raise or lower the finished grades at a side or **rear lot line** in such a way as to create any condition that may be detrimental or depreciating to abutting **lots** or **uses**.
- 10.1025.20 Any raising or lowering of finished grades or construction of drainage facilities, swales or retaining walls at a property line shall be subject to review and approval by the **Code Official**.

- 10.1025.30 Earth products removal and placement activities shall be designed and carried out so that stormwater either will be infiltrated on site or will flow to a public surface drainage system or existing natural drainage course, both during the activity and upon completion and final grading. Such activities shall utilize stormwater **Best Management Practices** as set forth in the Planning Board's Site Plan Review Regulations.
- 10.1025.40 No material used in the filling or raising of land within residential **lots** shall include any garbage, ash or organic material, or any material detrimental to the stability of the **structure**, as determined by the **Code Official**.

10.1026 Expansion of Pre-Existing Earth Products Removal Activities

Where an earth products removal operation legally existed on a **lot** prior to December 18, 1995, the extension of such activity beyond the required **yards** of the **lot**, or onto an **adjacent lot** in the same ownership, shall require a permit under this section and shall not be considered an extension of a **nonconforming use**.