



# Planning Department

City Of Portsmouth, NH



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## Planning Department

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### ● Conservation Commission

The Conservation Commission is comprised of seven members and two alternates charged by statute with the protection and proper utilization of the natural resources of the City. The commission meets on the second Wednesday of each month to consider and make recommendations to the New Hampshire Wetlands Bureau and the Planning Board on matters affecting natural resources.

[CONSERVATION COMMISSION RULES AND PROCEDURES PDF](#)

*\* Article VI from the Zoning Ordinance Entitled Inland Wetlands Protection*



**Back, from left to right:**

Brian Wazlaw, Don Green, Allison Tanner, Steve Miller, Barbara McV

**Front, from left to right:**

Charles Cormier, Eva Powers and Skye Maher

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### **Board Member *Index***

- Charles Cormier, Chair
- Steven Miller, Vice-Chair
- Donald Green
- Allison Tanner
- J. Lyn Walters
- Brian Wazlaw
- Eva Powers
- Barbra McMilan, Alternate
- Skye Maher, Alternate



## **Article VI**    *Inland Wetlands Protection*

### Section 10-601 *Authority*

- A. This section is adopted pursuant to the authority granted by NH RSA 674:20-21 and NH RSA 674:16-17. As part of the adoption process, the City Council finds that the wetland areas within the City of Portsmouth are in need of protection from certain activities, the impact of which results in alteration or destruction of the wetlands.

### Section 10-602 *General*

- A. Notwithstanding any other provisions of the Zoning Ordinance, the City of Portsmouth and its administrative and operating agencies or instrumentality's are not exempt from the provisions of this article.

### Section 10-603 *Purpose and Intent*

- A. The purposes of the Inland Wetlands Protection Ordinance are as follows:
1. To maintain the quality of surface waters and ground water by 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, natural 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 flow patterns of streams and other water courses within the City.
  3. To protect potential water supplies and existing aquifers and aquifer recharge areas.
  4. To protect wildlife habitats and to maintain ecological balance.
  5. To protect unique or unusual natural areas and rare and endangered plant and animal species.
  6. To protect 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.

B. Administration of Ordinance:

1. The criteria included in this ordinance and in RSA 482-A and in the Department of Environmental Services regulations shall be used when determining whether to approve, approve with conditions, approve in part with conditions or deny applications. In all instances, applicants shall submit a statement describing the impact of a proposed project design and provide evidence which demonstrates that the submitted proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this ordinance.

Section 10-604 *Definitions*

**Best Management Practice** - Applying the appropriate techniques to minimize disturbances and impact to the wetland resulting from those activities which will alter the natural character of the wetland.

**Buffer Zone** - All land within 100 feet of the Inland Wetlands District boundary.

**Certified Wetland Scientist** – A person qualified to perform wetland delineation and certified by the NH Board of Natural Scientist pursuant to RSA 310-A:76.

**Federal Manual** - Corps of Engineers Wetland Delineation Manual – Technical Report Y-87-1.

**Field Indicators** – Field Indicators for Identifying Hydric Soils in New England Version 2.

**Hydric Soils** - Soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part of the soil strata and as further defined in the Federal Manual.

**Hydrophytic Vegetation** - Macrophytic plant life growing in water, in soil, or on a substrate that is at least periodically deficient in oxygen as a result of excess water content and as further defined in the Federal Manual.

**Inland Wetlands** - Freshwater areas that have hydric soils, hydrophytic vegetation, and wetland hydrology as defined in the Federal Manual.

**Inland Wetlands Protection District** - The Inland Wetlands Protection District as further defined in Section 10-605.

**Wetland Hydrology** - Permanent or periodic inundation, or soil saturation to within 6 inches (6") of the soil surface for at least seven (7) consecutive days during the growing season and as further defined in the Federal Manual.

**Wetlands** - Any area which has been identified by the use of the Federal Manual and/or Field Indicators as being a wetland.

### Section 10-605 *Inland Wetlands Protection District Boundaries*

- A. The Inland Wetlands Protection District is an overlay district that comprises the following areas within the City of Portsmouth: inland wetlands greater than 1/2 (one-half) acre in size. In all cases, the precise location of inland wetlands shall be determined 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. Man-made drainage structures including but not limited to detention ponds, retention ponds, and drainage swales shall not be considered part of the Inland Wetlands Protection District only to the extent that such structures do not require a buffer zone.
- B. Tidal and freshwater wetlands are regulated by the State of New Hampshire under NH RSA 482-A; it is recognized that the City will simultaneously regulate the freshwater wetlands that are contained in the Inland Wetlands Protection District. Other pertinent local requirements are contained in Article III of the City of Portsmouth Zoning Ordinance.

### Section 10-606 *Inland Wetlands Protection District Buffer Zone*

- A. The Inland Wetlands Protection District Buffer Zone shall be comprised of all land within 100 feet of the Inland Wetlands Protection District boundary. This 100 foot buffer zone shall be parallel to and measured from the edge of the Inland Wetland Protection District boundary on a horizontal plane.
- B. The purpose of the buffer zone is to reduce sedimentation of wetlands and bodies of water, to aid in the control of nonpoint source pollution, to provide a vegetative cover for filtration of runoff, to provide for the protection of wildlife habitat and to help preserve ecological balance.

### Section 10-607 *Permitted Uses*

- A. Permitted uses within the Inland Wetlands Protection District and the buffer zone are those that will not require the erection or construction of any building or impermeable surface; that will not alter the natural surface configuration by the addition of fill or by dredging; that will not result in site alterations; and that otherwise are permitted by the Zoning Ordinance. Examples of permitted uses within the Inland Wetlands Protection District and the buffer zone include:
  - 1. Forestry and tree farming using best management practices in order to protect streams from damage and prevent sedimentation. The practice known as "clear-cutting" is specifically prohibited.
  - 2. Wildlife refuges.
  - 3. Parks and recreational uses consistent with the purpose and intent of this Ordinance.

4. Conservation areas and nature trails.
5. Open spaces as permitted or required by the Subdivision Regulations or the Zoning Ordinance.
6. Piers and/or docks, provided that all required state and federal permits have been granted.
7. The following will be permitted within the buffer area:
  - a. Replacement septic tanks and leach fields may be permitted within the buffer zone provided evidence is submitted that no alternative location is available on the property, but in no case shall a new septic tank or leach field be permitted in the buffer zone.
  - b. Any building located within the buffer zone, which is hereafter damaged or destroyed by fire or any cause other than the willful act of the owner or his agent, may be restored or reconstructed, provided that such restoration shall not enlarge the footprint area of the building. A Building Permit must be obtained and work started, within twelve (12) months of the damage. Nothing in this section shall prevent the demolition of the remains of any building so damaged or destroyed.
  - c. Motor vehicles, except for all terrain vehicles, are allowed in the buffer zone when their use is necessary for any of the purposes permitted by this Ordinance. Motor vehicles are allowed in wetlands only after a permit for such use has been issued by the state Wetlands Bureau.

#### Section 10-608 *Conditional Uses*

- A. Improvements to existing public right-of-ways and sidewalks for public safety are exempt from Conditional Use Permits. Improvements to existing private roadways and sidewalks that do not require the placement of additional fill in wetlands or undisturbed wetland buffers shall be entitled to a Conditional Use Permit.

The Planning Board shall grant conditional use approval for the installation of utilities within right-of-ways (including power lines and pipe lines), within the Inland Wetlands Protection District and the buffer zone only after proper public notice and public hearing and all of the following conditions are found to exist:

1. The proposed construction is in the public interest.
2. Design, construction, and maintenance methods will minimize any detrimental impact of such uses 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.
  4. Economic considerations alone are not sufficient reason for granting a conditional use permit.
  5. The Planning Board has received and considered the review and comments of the Conservation Commission and the City Engineer.
  6. Installation of utilities in the Inland Wetlands Protection District or buffer zone shall demonstrate that alterations of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.
- B. The Planning Board shall grant conditional use approval for any use within the buffer zone or Inland Wetlands Protection District which is not permitted by Section 10-607 only after proper public notice and public hearing and provided that the Board finds that all other restrictions of this Ordinance are met and that all of the following are met in accordance with The Highway Methodology Workbook Supplement Wetland Functions and Values A Descriptive Approach by US Army Corps of Engineers New England Division September 1999 NAEEP-360-1-30a:
1. The land is reasonably suited to the use and the wetland values are not adversely impacted.
  2. There is no adverse impact on the wetland values of the surrounding properties.
  3. The applicant shall demonstrate that alterations of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.
  4. The applicant shall demonstrate that the proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of the ordinance.
- C. The following procedures shall apply to applications for conditional use under Section 10-608 (A) and Section 10-608 (B):
1. An application for conditional use approval shall be submitted to the Planning Board.
  2. The Planning Board shall refer applications to the Conservation Commission for review and comment.
  3. The Planning Board shall require the findings of an independent certified wetland scientist for all proposals, regardless of size. This requirement shall not apply in cases where more than fifty percent (50%) of the buffer zone concerned is developed upland. "Developed upland" shall mean an area that meets at least one

of the following criteria: (1) filled or excavated land, (2) paved or graded land used as a parking lot or roadway. The Planning Board may assess the owner reasonable fees to cover the costs of additional special investigative studies and for the review of documents required by application.

4. Within 60 days of the initial submittal to the Planning Board, the Planning Board shall hold a Public Hearing on the activity. A letter of decision will be issued within 10 working days of the Public Hearing. The time requirements stated herein may be waived by the applicant.
  5. The burden of proof that the conditions in Section 10-608(A) and Section 10-608(B) exist or are met shall be the responsibility of person(s) requesting the Conditional Use Permit.
  6. Public notice for hearings referenced in Section 10-608 (A) and Section 10-608 (B) shall be made in the same manner as the notice provided for site review and subdivision hearings.
  7. The application process pursuant to this section may proceed prior to and/or run concurrent with the State and Federal permit processes, however, the Conditional Use Permit shall not become effective until the State and Federal permits are received.
  8. A Conditional Use Permit shall expire unless used within a period of one year from the date of approval by the Planning Board. For these purposes, the using of a permit is to obtain a duly issued Building/Change of Use Permit from the Inspections Division. The applicant may request in writing, prior to the expiration date, a one -year extension. No other extensions shall be granted without the Planning Board reconsidering the application as part of a Public Hearing.
- D. New construction of decks, additions and/or buildings which are raised above ground level in such a way as to permit the natural flow of any surface water shall be permitted in the buffer zone.
1. Applications for such construction shall be submitted to the Code Official for standard review procedures. A copy of the approved Building Permit and plans shall be forwarded to the Conservation Commission.
  2. If underground utilities are installed to service the above, then the ground shall be restored to the same condition it was prior to the installation of the utilities.