

## **XV. XIII. Water Quality Protection Overlay District**

(Note, this proposed NEW Article is a result of merging Articles XIII. Wetlands Conservation Overlay District and Article XV. Water Quality Protection Overlay District into one Article. If passed, all subsequent Articles will be renumbered accordingly. Also, references to Articles XIII and higher in the text of this Zoning Ordinance will be edited accordingly.)

### **A. Purpose/Authority**

The surface waters (streams, rivers, lakes, and ponds) and wetlands of New Durham supply drinking water, wildlife habitat, and recreation opportunities for the community. In order to preserve these critically important resources and in the interest of public health, safety, and welfare, New Durham shall require conservation and land management practices that minimize environmental degradation and alteration of scenic and rural character, restrict construction in environmentally sensitive wetland areas, and disallow very poorly drained soils from being considered toward meeting requirements of minimum lot sizes in new subdivisions. ~~including utilizing buffer and setback standards.~~

1. Purpose: The Purposes of the Water Quality Protection Overlay District (WQPOD) are to:
  - a. Protect and prevent destruction of municipal and public water sources, including surface water resources and wetlands;
  - b. Control the development of structures and land uses and encourage those uses that can be appropriately and safely located on naturally occurring wetlands and surface water resources;
  - c. Provide for nutrient attenuation and prevention of non-point source pollution from stormwater runoff;
  - d. Promote bank stabilization for all surface water resources and wetlands;
  - e. Prevent erosion and excess sedimentation from entering drinking water sources, surface water resources, and their associated wetlands;
  - f. Protect wetlands, watercourses, surface and groundwater supplies, and waterbodies from degradation of their functions;
  - g. Minimize the impact of floods by preventing the destruction of natural wetlands that provide flood protection, recharge the groundwater supply, and augment stream flow during dry periods;
  - h. Protect the continuation of natural flow patterns and hydrology of surface waters, streams, and other water courses and wetlands, including maintenance of groundwater recharge and stream flow during dry periods;
  - i. Prevent unnecessary or excessive expenses to the town by providing and maintaining essential service and utilities that arise from unwise use of wetlands and surface water resources;
  - j. Preserve and enhance those aesthetic values associated with wetlands and surface water resources in New Durham;
  - k. Protect wildlife habitat; and,
  - l. Preserve, protect, and maintain ecological services that protect water quality.

The Water Quality Protection Overlay District (WQOPD) ensures areas of restricted development and limited land use adjacent to surface waters and wetlands in New Durham.

2. Authority: This ordinance has been enacted to implement the recommendations of the Town of New Durham Master Plan and is authorized by RSA 674:21, Innovative Land Use Controls and RSA 674:21 (j), Environmental Characteristics Zoning.
3. Separability: If any section, provision, portion, clause, or phrase of this article shall be held invalid or unconstitutional by any court or competent authority, such holding shall not affect, impair, or invalidate any other section, provision, position, clause, or phrase of this ordinance.
4. Conflict with other Regulations: Where any provision of this article conflicts with state law or other local ordinances, the more restrictive requirement(s) shall apply.

## **B. District Boundaries**

The New Durham WQOPD is defined as the upland area within the buffers and setbacks outlined below in Section. D, Table 8 of this Article that are contiguous to the following water resources **and are shown on the New Durham Soils Map 2022 on file in the Land Use Office**:

1. Wetlands: Those areas delineated as very poorly and poorly drained soils by the Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture, Web Soil Survey, available online at <https://websoilsurvey.nrcs.usda.gov/>, accessed 04/18/2022. The WQOPD also includes those areas such as swamps, marshes, and bogs that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of vegetation adapted for life in saturated soil conditions. Soil Series and Land Types commonly associated with wetlands include:
  - a. Soils as described by the Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture, Web Soil Survey, available online at <https://websoilsurvey.nrcs.usda.gov/>, accessed 04/18/2022, include the following “very poorly drained” and “poorly drained” soils:
    1. Very Poorly Drained Soils include:
      - i. Fresh water marsh (FA)
      - ii. Muck and Peat (Mp)
      - iii. Whitman very stony fine sandy loam (Wa)
    2. Poorly Drained soils include:
      - i. Leicester (LeA) (LeB)
      - ii. Leicester-Ridgebury (LrA) (LrB)
      - iii. Ridgebury (RgA) (RgB) (RlA) (RlB)
      - iv. Saugatuck (Sb)
      - v. Rumney (Ru)
    3. Soils with drainage class of 5 or 6 on the high intensity soil map are wetland soil.
2. Wetlands determined to be areas of one acre or more in size, or of any size if contiguous to surface waters such as lakes, ponds, and streams, subjected to high water tables for extended periods of time and include, but are not necessarily limited to, all such areas

delineated as wetlands on the current “Soil Conditions” map (New Durham Natural Resource Inventory Map. Titled “Soil Conditions”).

3. Perennial Rivers.
4. First through fourth order streams as defined by the New Hampshire Department of Environmental Services, including seasonal (intermittent) and perennial streams.
5. Ponds and Lakes that are less than 10 acres in size.
6. Vernal Pools (as verified by a wetland scientist or qualified natural resource professional).
7. The following wetlands and surface waters of special local significance (~~Prime Wetlands or candidate~~, large or uncommon wetlands, and headwater streams that are delineated in the Natural Resource Inventory, 2011):
  - i. Cooper Cedar Woods
  - ii. Davis Crossing Road, Old Bay Road, and (Abandoned)Mill Road Wetland
  - iii. Tash Rd and the Davis Crossing Road Wetland
  - iv. Wetland off of Drew Road
  - v. Wetland on northeast side of Route 11
  - vi. Wetland southwest of Route 11, close to Berry Road, Valley Road
  - vii. Wetland on inlet on eastern shore of Merrymeeting Lake
  - viii. Wetland along southwestern shorelines of Chalk Pond and March’s Pond
  - ix. Wetland at headwaters of the Ela River
  - x. Wetland north of Caverly Road and southwest of Shaw’s Pond
  - xi. Wetland between Middleton Road, Old Bay Road
  - xii. Beaver Brook
  - xiii. Hayes Brook
  - xiv. Mad River
  - xv. Peter Brook
  - xvi. Unnamed River (outlet of Coldrain Pond into Club Pond)
  - xvii. Goodwin Brook
  - xviii. Jennings Brook

(See provisions of Article XIV. Shorefront Conservation Overlay District for Great Ponds in excess of 10 acres).

Boundary Disputes: When any boundary of the WQPOD is disputed by either the Town of New Durham or by an applicant, the Planning Board, at the applicant’s expense (including any necessary soil testing procedures), may engage an independent NH Certified Soil Scientist(s) and/or NH Certified Wetland Scientist(s) to determine the location of the Water Quality Protection Overlay District boundary. The independent Certified Soil and/or Wetland Scientist(s) shall transmit his/her findings to the project engineer/surveyor who shall add said findings to the project plan. This revised plan, showing all Water Quality Protection Overlay District boundaries, shall be presented to the Planning Board who shall make the final determination regarding District boundaries. The Town’s Certified Wetland Scientist Agent shall convey said findings to the landowner and applicant.

## C. Applicability

1. The Water Quality Protection Overlay District (WQPOD) is a zoning overlay district which imposes additional requirements and restrictions to those of the underlying district. In all cases, the more restrictive requirement(s) shall apply. This paragraph shall not prevent the Planning Board from adjusting the requirements of this Article as appropriate to accomplish the goals of Article XVI, Open Space Conservation Subdivision Ordinance.
2. **The provisions of the Water Quality Protection Overlay District shall apply to all lots of 10 acres or less that are created by standard subdivisions first filed after Town Meeting 2007; and to all lots and open space areas created by Open Space Conservation Subdivision first filed after Town Meeting 2007.**
3. WQPOD buffers and setbacks shall be delineated on a site-specific basis:
  - a. By an applicant or their consultant when activity is proposed that creates land disturbance as defined under this ordinance on any area of a lot that may contribute stormwater within the WQPOD.
  - b. By an applicant or their consultant as part of a proposal that requires a building permit, Planning Board Site Plan Review application, Planning Board Subdivision Application, or application for zoning relief by the Zoning Board of Adjustment.
4. If a WQPOD buffer or setback is identified by an applicant or their consultant as outlined in C2. above, a description shall be included in any deeds subsequently conveying all or a portion of a property, along with a reference to the recording information for any pertinent Plan Number from the Registry of Deeds.
5. Manmade Features Not Applicable: In this Ordinance, “manmade” shall refer to recent structures or changes to the landscape and shall not include cellar holes, gravel pits, abandoned dams, or other prior manmade alterations that have become, over time, part of the natural topography. Any of the following features shall be exempt from this ordinance:
  - a. Manmade ditches, swales, sedimentation/detention basins or ponds, and stormwater management practices provided they meet XVII. Stormwater Management and Erosion Control standards;
  - b. Rural use manmade ponds such as agricultural ponds, fire ponds, wildlife ponds, and the like, provided they meet the NH-DES standards for design and construction.
6. Enforcement: The Town of New Durham retains the right to inspect any property that is subject to this ordinance for the purposes of determining compliance.
7. Property owners may initially consult the most recent USGS map of New Durham (USGS Quadrangle maps) or the WQPOD reference map to determine if their Subdivision project area contains surface waters or wetlands that are likely to fall within the WQPOD. Any question of the applicability of this ordinance may require wetlands delineation by a New Hampshire Certified Soil Scientist(s) and/or New Hampshire Certified Wetlands Scientist(s) at the applicant’s expense.

## D. Dimensional Requirements

1. Lot Area: The square footage area subject to this ordinance shall be countable toward meeting minimum lot size, lot area, and density requirements for new subdivisions in accordance with Article V.B.1, Lot Area Requirements, except in regard to very poorly drained soil types, which will not be considered as part of the minimum size requirement of any lot. Poorly drained soil types may be used to fulfill 25 percent (25%) of the minimum size requirement of any lot.
2. Table 8: Buffer and Setback Distances by Resource and Use Category below identifies the base buffer and setback requirements for each resource type. Buffer and setback distances in Table 8 refer to the total horizontal distance in one direction from a water resource Reference Line. In cases where an area qualifies under more than one resource category, the largest buffer/setback distance shall apply.

<b>Table 8: Buffer and Setback Distances by Resource and Use Category</b>				
<b>Surface Water and Wetlands Resource</b>	<b>Buffer</b>	<b>Buildings and Structures Setback</b>	<b>Septic Systems Setback</b>	<b>Impervious Surfaces Setback</b>
Perennial Streams & Rivers	35'	75'	100'	50'
Lakes & Ponds < 10 Acres	25'	75'	100'	50'
Wetlands	25'	75'	75'	50'
Vernal Pools	50'	75'	75'	50'
Seasonal or Intermittent Streams	25'	50'	75'	50'
Wetland and Surface Waters of Local Significance	75'	100'	125'	75'
Wetlands Contiguous to Lakes & Ponds > 10 Acres	50'	100'	100'	75'

~~Buffer~~ = see Article III: Definitions  
~~Setback~~ = See Article III: Definitions  
 Septic Systems = subsurface wastewater treatment (sewage disposal) system (individual) including a leach field (Make aka of Subsurface Waste Disposal system already defined?)  
~~Impervious Surfaces~~ = See Article III: Definitions

3. Table 9: Distance Adjustments for Steep Slope Areas (below) shows how much the buffer must be increased in properties with steep slopes. Steep slope areas will also be considered in determining the width of a WQPOD buffer. If the WQPOD buffer designated in Table 8 contains an area that has a slope of 10% or more for more than 10 linear feet in a direction perpendicular to the edge of a water resource, the width of the WQPOD buffer will be increased as shown in Table 9.

<b>Table 9: Distance Adjustments for Steep Slope Areas</b>	
<b>Slope (%)</b>	<b>WQPOD buffer (feet)</b>
0-9.9 %	No additional distance
10-19.9 %	15 additional feet
20-29.9 %	35 additional feet
30-39.9 %	55 additional feet
40 % or more	Buffer to extend up-slope until slope is less than 40% for at least 10 linear feet in a direction perpendicular to the Reference Line

4. Larger buffer or setback distances may be required on a site-specific basis to protect against water quality degradation and to preserve significant wildlife and botanical habitats. The Town may look to the following documents (as amended) or other documents for guidance as to the sensitivity of a habitat/resource and for recommendations for protective measures such as enlarged buffers and setbacks:
- a. Buffers Options for the Bay. (<https://bufferoptionsnh.org/>)
  - b. Effects of Urbanization on Stream Quality at Selected Sites in the Seacoast Region in New Hampshire (Deacon, Soule and Smith, US Department of the Interior and US Geological Survey, Scientific Investigations Report 2005-5103).
  - c. New Hampshire’s Water Quality Shoreland Protection Act (RSA 483-B) under state administrative rule Env.Wq 1400, requiring a 50 foot “waterfront buffer” limiting vegetation and tree removal along 4th order streams and great ponds (greater than 10 acres).

- d. Protecting the Purity of Surface Water Sources of Drinking Water (Env-Dw 902) establishes minimum land use setbacks from certain surface water sources and/or their tributaries in water supply watersheds through a process outlined in the rule.
- e. The Alteration of Terrain rules (Env-Wq 1500) administered by NHDES limit stormwater discharges within 100 feet of a source or tributaries located in “Water Supply Intake Protection Areas” as defined in the rule.
- f. Guide to New Hampshire Timber Harvesting Laws (<https://www.nh.gov/nhdfl/documents/guide-to-nh-timber-harvesting-laws-rvs2012.pdf>) NH Cooperative Extension.
- g. Ben Kimball and Daniel D. Sperduto, The Nature of New Hampshire: Natural Communities of the Granite State. Univ. of New Hampshire Press, 2011.
- h. New Hampshire Wildlife Action Plan. (2015-as amended) NH Fish and Game Department. (<https://www.wildlife.state.nh.us/wildlife/wap.html>)
- i. New Hampshire Forest Action Plan. (2020 as amended) NH Division of Forests and Lands. (<https://www.nh.gov/nhdfl/natural-heritage/current-projects-and-events/2020-forest-action-plan.htm>)

## E. Permitted Uses

1. The following uses, consistent with applicable state statute and regulation, and otherwise permitted in the underlying zoning district, shall be permitted in the WQPOD, provided that they shall be conducted according to the applicable provisions. All other activities and uses are prohibited except as allowed by a Conditional Use Permit issued by the Planning Board (see Section F. Uses allowed in WQPOD with Conditional Use Permit). Permitted uses include the following:
  - a. Recreational trails and paths for non-mechanized recreational uses, including but not limited to hiking, walking, bicycling, and horseback riding, are permitted providing the following standards are met:
    - i. ~~Located no closer than 50 feet from the source, perennial tributaries, or contributing wetlands;~~
    - ii. Constructed as to cause minimal land disturbance to install or maintain (e.g., removal or trimming of surface vegetation, minor grading, installation of fencing, establishment of a pathway, or slope stabilization);
    - iii. Finished width not to exceed 6 feet; with minimal disturbance to land and vegetation; and located in the safest, most direct pathway to the water resource;
    - iv. ~~The Conservation Commission reviews and recommends this activity and its location in the WQPOD;~~
    - v. Surface is composed of pervious or semi-pervious materials;
    - vi. No clearing of natural vegetation occurs beyond 2 feet of the trail edge;
    - vii. Location and configuration minimizes clearing and grading necessary for construction;
    - viii. Construction of new trails and maintenance of existing trails shall be consistent with standards in “Best Management Practices For Erosion Control During Trail Maintenance and Construction” (2017, as amended) by NH Department of

Resources and Economic Development Division of Parks & Recreation; Bureau of Trails (<https://www.nhstateparks.org/about-us/trails-bureau/trail-maintenance>) or “[Best Management Practices for Forestry: Protecting New Hampshire's Water Quality](https://extension.unh.edu/resource/best-management-practices-forestry-protecting-new-hampshires-water-quality)” (2005, as amended) by the University of New Hampshire Cooperative Extension. (<https://extension.unh.edu/resource/best-management-practices-forestry-protecting-new-hampshires-water-quality>)

- b. Recreational trails and paths for snow traveling vehicle uses during Winter periods when the ground is frozen, providing the following standards are met:
  - i. Constructed as to cause minimal land disturbance to install or maintain (e.g., removal or trimming of surface vegetation, minor grading or slope stabilization to reduce erosion, installation of fencing, establishment of a pathway);
  - ii. Finished width not to exceed 15 feet; with minimal disturbance to land and vegetation; and located in the safest, most direct pathway to the water resource;
  - iii. No clearing of natural vegetation occurs beyond 2 feet of the trail edge;
  - iv. Location and configuration minimizes clearing and grading necessary for construction;
  - v. Construction of new trails and maintenance of existing trails shall be consistent with standards in “Best Management Practices For Erosion Control During Trail Maintenance and Construction” (2017, as amended) by NH Department of Resources and Economic Development Division of Parks & Recreation; Bureau of Trails (<https://www.nhstateparks.org/about-us/trails-bureau/trail-maintenance>)
- c. Construction or placement of sheds or decks which occupy a ground area no greater than 150 square feet in size, that are incidental and subordinate to the primary building of the property, and do not require the disturbance or improvement of the soil surface or construction of a sub-surface foundation may be constructed no closer than 20 feet from the water resource reference line (See Article XIV. Shorefront Conservation Overlay District).
- d. Installation of utilities to service existing lots of record.
- e. Removal or control of invasive species and removal of dead, diseased, unsafe, or fallen trees. ~~A plan prepared by a licensed forester is required.~~
- f. Buffer restoration activities including but not limited to replanting of vegetation, soil replacement and amendments, and limited grading and landscape contouring. ~~A plan prepared by a licensed forester, arborist, or landscape architect is required.~~
- g. Wildlife or fisheries management and wildlife refuges
- h. Scientific research and educational activities.
- i. Forestry management and timber harvesting as permitted by RSA 485-A:17.IV, with implementation of best management practices, including protecting surface water resources and wetlands from damage and sedimentation, as recommended in the document “[Best Management Practices for Forestry: Protecting New Hampshire's Water Quality](https://extension.unh.edu/resource/best-management-practices-forestry-protecting-new-hampshires-water-quality)” (2005, as amended) by the University of New Hampshire Cooperative Extension. (<https://extension.unh.edu/resource/best-management-practices-forestry-protecting-new-hampshires-water-quality>)



- j. Agriculture as permitted by RSA 21:34-a and 432:33, with implementation of best management practices, including the protection of wetlands from pollution caused by fertilizers, pesticides, and herbicides, as recommended in the document “Manual of Best Management Practices for Agriculture in New Hampshire” (2017, as amended) by the NH Department of Agriculture, Division of Regulatory Services. (<https://www.agriculture.nh.gov/publications-forms/documents/bmp-manual.pdf>)
- k. Open spaces as permitted or required by the subdivision regulations or zoning ordinance.
- l. Beaches that were existing prior to the March 2007 Town Meeting on lakes and ponds. New perched beaches may be created on lakes and ponds with the prior permission of the Conservation Commission and the NH-DES.

## **F. Uses Allowed in Water Quality Protection Overlay District with Conditional Use Permit**

All activities in the WQPOD not listed in Section E. Permitted Uses above are presumed to have the potential to impair water quality or wetland functions and values, unless proven otherwise by the applicant as provided below. The New Durham Planning Board will be responsible for reviewing and permitting any conditional use permits.

The following uses may be granted by a Conditional Use Permit from the Planning Board according to the following criteria:

1. Construction of primary access roads and driveways absent any other feasible option.
2. New or replacement accessory structures in the WQPOD associated with legally pre-existing primary structures if it is demonstrated that no practicable alternative exists elsewhere on the lot and stormwater runoff and erosion controls are installed to protect water quality.
3. The repair or maintenance of streets, roads, and other existing access ways, including driveways, footpaths, bridges, and utility right of way easements including power lines, pipelines, and related structures. Permitted only if essential to the productive use of land not defined as wetlands adjacent to the WQPOD. These uses shall be located and constructed in such a way as to minimize any detrimental impact upon the drinking water source and consistent with state recommended design standards, and only if no viable alternative is available.
4. Outdoor recreational facilities that do not require the construction of buildings or structures.
5. Trails and associated structures for use by year-round motorized recreational vehicles.

The Planning Board may approve a Conditional Use Permit for a use in the WQPOD only if it finds, with the advice of the New Durham Conservation Commission, that all of the following standards have been met in addition to any performance standards for the particular use:

1. Prior to making a decision in regard to the possible approval of any Conditional Use Permit application, the Planning Board shall afford the Conservation Commission an

opportunity to provide written comment. After consideration and review of an application for a Conditional Use Permit, the Conservation Commission may recommend the Planning Board impose conditions of approval, if deemed necessary, to mitigate the potential for adverse effects caused by the proposed activity or use and to meet the following standards. If the Planning Board decides to grant a conditional use permit that does not include the Conservation Commission's recommendations, the Planning Board must provide written comment to the Conservation Commission as part of their Notice of Decision on the reason for this decision.

2. There is no alternative location on the parcel that is outside the WQPOD that is feasible and reasonable for the proposed use.
3. The proposed activity minimizes and prevents pollutant contributions to drinking water source waters, including principal sources and surface waters within the contributing drainage area.
4. The amount of soil disturbance will be the minimum necessary for the construction and operation of the facilities as determined by the Planning Board.
5. The location, design, construction, and maintenance of the facilities will minimize any detrimental impact on the WQPOD and mitigation activities will be undertaken to counterbalance any adverse impacts.
6. The proposed activity minimizes or mitigates potential impacts from landscape changes, such as but not limited to impervious cover, removal of forest canopy and groundcover, erosion, and non-point source pollution. Restoration activities will leave the site, as nearly as possible, in its existing condition and grade at the time of application for the conditional use permit.
7. The proposed activities would not disturb habitat for rare, threatened, or endangered species or exemplary natural communities. Such determination is to be made by the New Hampshire Natural Heritage Bureau. (<https://www.nh.gov/nhdfl/about-us/natural-heritage-bureau.htm>).
8. The proposed activity maintains to the practical extent possible natural landscape hydrologic functions to sustain drinking water source areas, including but not limited to infiltration, overland flow, natural drainage pathways to wetlands, groundwater recharge, and floodplain functions.
9. All stormwater is managed and treated to prevent water quality impacts and will be treated to the same standards as municipal stormwater regulations (See Article XVII. Stormwater Management and Erosion Control Ordinance).
10. All design criteria and performance standards must be met from section G. Design Criteria and Performance Standards for Conditional Use Permits.

## **G. Design Criteria and Performance Standards for Conditional Use Permits**

All construction, alteration, placement, storage, introduction, or movement of structures or land in the WQPOD with a Conditional Use Permit shall conform with the following performance standards:

1. Vegetation and Soil Disturbance: All existing vegetation including trees, shrubs, and undergrowth shall be allowed to remain undisturbed within the WQPOD, as required in Table 8 and Table 9. Notwithstanding the foregoing, removal or control by non-chemical means of invasive, non-native, or poisonous plant species shall be allowed in the WQPOD. No soil disturbance, removal, or cutting of vegetation or introduction of structures or materials of any kind shall occur within this naturally vegetated buffer, except as may be allowed in Section E: Permitted Uses. or may be granted through a conditional use permit outlined in Section F: Uses allowed in Water Quality Protection Overlay District with Conditional Use Permit.
2. Sedimentation and Erosion Control: All activities, construction, and the use of buildings, structures, and land within the WQPOD 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. No structure or building, impermeable surface such as a paved driveway or parking area, nor related topographical alteration shall be located, constructed or occur within the distance from the water resource reference line specified in Table 8 and Table 9 above, except as may be allowed in Section E: Permitted Uses or may be granted through a conditional use permit outlined in Section F. All such activities shall be conducted in accordance with Best Management Practices for stormwater management outlined in New Hampshire Stormwater Manual (Vol. 1 and Vol. 2) 2008 (as amended) and in conformance with Article XVII. Stormwater Management and Erosion Control Ordinance.
3. Identification: The subdivision applicant shall be responsible for showing a building envelope on each lot of the subdivision plan. The envelope will designate the outer limits of allowable construction for all buildings on the lot.

The subdivision applicant shall be responsible for placing a permanent monument (e.g., iron pin, granite bound) at all points of the lot lines that intersect with the upland limit of the WQPOD prior to the start of any construction related activities. These monuments shall be shown on the subdivision plan.

The entire length of the upland limit of the WQPOD shall be marked with highly visible construction tape prior to and for the full duration of construction related activities. The applicant shall also be responsible for affixing tags to trees or other durable objects (metal stakes, etc.), at intervals deemed acceptable by the planning board, along the upland boundary of the WQPOD, and maintaining said tags as needed to provide evidence of the upland side boundary. Under no circumstance shall the tag interval be required to be closer than 25 feet. Tags shall be obtained from the Town.

## **H. Prohibited Uses**

Any use that is not identified as a permitted use in this Article shall be a prohibited use in the WQPOD including:

1. Cutting/removing vegetation within the WQPOD except where permitted under the provisions of this section. No more than fifty percent (50%) of the basal area of trees shall be cut or otherwise felled over the course of a ten (10) year period, leaving a well-distributed cover of healthy, growing trees or other vegetation within the WQPOD.

Agriculture and forestry, conducted according to Best Management Practices as recommended by the Division of Forest and Lands and Department of Agriculture Markets and Food, are exempt under RSA 483-B:9.

2. There shall be a fifty (50) foot no-disturb naturally vegetated buffer strip around vernal pools as defined by a certified wetland scientist. This naturally vegetated buffer strip is not eligible for a Conditional Use Permit.
3. No septic tank or leach field may be constructed or enlarged closer than one hundred and twenty-five (125) feet to any wetland.

#### Article III: Definitions to add

- a. Buffer: a naturally vegetated no-disturb segment of land of a specific dimension directly upland and adjacent to a surface water resource, such as a lake, stream, river, pond, or wetland. It is measured outward on a horizontal plane from the reference line or the delineated edge of the surface water as applicable. Its purpose is to provide protection to surface water used as a municipal resource from the impacts of human activities by establishing an area of limited use and disturbance immediately adjacent to these resources.
- b. Impervious Surfaces: any modified surface that cannot effectively absorb or infiltrate water. Examples include, but are not limited to, roofs, decks, patios, paved, gravel, or crushed stone driveways, parking areas, and walkways. **(Recommend this definition replace existing Impermeable Surface already defined. All instances of "impermeable surface" then replaced by impervious surface in text)**
- c. Perennial Streams, Brook, or River: A stream, brook, or river that, under normal circumstances, runs all year long.
- d. Stream, First Order: The smallest streams with a year-round flow and no tributaries.
- e. Stream, Second Order: Formed when two first order streams flow into each other.
- f. Stream, Third Order: Formed when two second order streams flow into each other.
- g. Stream, Fourth Order: Formed when two third order streams flow into each other.
- h. Seasonal/Intermittent Streams: streams that have a well-defined channel that contains water for only part of the year (typically during winter and spring). The flow may be heavily supplemented by stormwater. When dry, they typically lack the biological and hydrological characteristics commonly associated with continuous conveyances of water.