

Pleasant Lake Watershed Protection Ordinance with amendments highlighted in yellow 01 14 15

330.1 Authority and Statement of Intent

- A. Pursuant to RSA 674: 21, the Town of Deerfield adopts a Watershed Protection Overlay District and accompanying regulations to ensure the protection and preservation of Pleasant Lake and its watershed from the effects of point and non-point source pollution or sedimentation. The establishment of the Watershed Protection Overlay District and the adoption of these regulations are intended to:
1. Protect public health;
 2. Protect aquifers, which serve as existing or potential water supplies, and the aquifer recharge system;
 3. Protect surface waters and wetlands contiguous to surface waters;
 4. Protect the natural areas and wildlife habitats within the Watershed Protection Overlay Zone by maintaining ecological balances;
 5. Prevent the degradation of water quality through the regulation of land uses and development within the Watershed Protection Overlay District; and
 6. Assure proper use of natural resources and other public requirements.
- B. In the event of a conflict between the requirements of this section and other requirements of the Deerfield Zoning Ordinance or state law, the more stringent requirements shall govern.

330.2 Applicability

- A. The special provisions established in this Watershed Protection Ordinance shall apply to all development proposals and to potential contaminating activities within the Watershed Protection Overlay District. The boundaries of the Watershed Protection Overlay District have been delineated by the NH DES in the Pleasant Lake Watershed Base Map, dated April 2, 2001.
- B. The boundaries of the Watershed Protection Overlay District are identified through drainage, groundwater and soils analyses and are considered to be essential to the protection of the watershed from the effects of point and non-point source pollution or sedimentation.
- C. All development proposals occurring wholly or partly in an area within the Watershed Protection Overlay District shall be subject to the requirements of this Ordinance.

330.3 Administration

- A. General: The Deerfield Planning Board shall have authority to create processes and procedures to administer the provisions of the Watershed Protection Ordinance.
- B. Enforcement: The Building Inspector shall be responsible for enforcing the provisions and conditions of this Watershed Protection Ordinance, pursuant to the provisions of Section 701 of the Deerfield Zoning Ordinance.

330.4 Definitions

- A. **Automobile Service or Repair Station**: A retail establishment at which motor vehicles are refueled, serviced, and/or repaired.

- B. **Best Management Practices**: As defined in the latest edition of the New Hampshire Stormwater Manual, Volume I, Volume II, and Volume III, prepared by NH Department of Environmental Services (NHDES).
- C. **Buffer Zone**: The undisturbed natural area sufficient in size to mitigate runoff effects harmful to water quality.
- D. **Business Commercial Agricultural Activities**: The production of crops for sale, crops intended for widespread distribution to wholesalers or retail outlets. Business Commercial Agriculture includes livestock production and livestock grazing. Business Commercial Agriculture does not include crops grown for household consumption (e.g. backyard garden or from a vegetable garden or a few fruit trees).
- E. **Commercial Forestry**: Commercial Forestry means the science of silviculture and the practice and art of managing and using for human benefit forestlands and the natural resources that occur in association with forestlands, including trees, other plants, animals, soil, water, and related air and climate in the environment of a business and profit making activity.
- F. **Contamination**: Sedimentation, point and non-point source pollution, septage, or the discharge of hazardous materials.
- G. **Development**: Any activity resulting in a change in the physical character of any parcel of land, such as may be caused by, but not limited to: subdivisions; change in use; the construction or expansion of a building, deck, or shed; installation of a new well or subsurface sewerage disposal system associated with building construction; land disturbing activity such as Business Commercial Agriculture or commercial forestry; paving of a previously permeable area; grading, engineered; and new road construction. The term development is not intended to include the installation, expansion or improvement of lawns outside of the 100 foot buffer in Section 330.8, ground cover, natural vegetation or planting of shrubs or trees.
- H. **Grading**: The excavating or filling or combination thereof or any leveling to a smooth horizontal or sloping surface on a property. Grading that occurs in a major application shall include a grading plan prepared by a NH licensed professional engineer.
- I. **Hazardous Materials**: As defined in Superfund Amendment and Reauthorization Act of 1986 and Identification and Listing of Hazardous Wastes, 40 C.F.R. §261 (1987).
- J. **Hydrology**: The study of the earth's waters, their distribution and the cycle involving precipitation, infiltration into the soil and evaporation.
- K. **Impervious Surface**: A surface that is impenetrable by liquids, including, but not limited to, areas paved with conventional asphalt or concrete, gravel driveway and parking areas, sidewalks, patios, decks, and roofs which do not recharge water.
- L. **Infiltration Rate**: The volume of surface water that filters into the soil per unit of time.
- M. **Low-Impact Development (LID)**: An approach to site development and design that provides increased opportunities for storm water infiltration and increased hydrologic function within a watershed as defined in NH DES Fact Sheet WD-WMB-17, "Low-Impact Development and Stormwater Management," 2010 or any updated versions thereof.

- N. **Non-point Source Pollution**: Contaminants including, but not limited to pesticides, fertilizers, animal wastes, sediments, nutrients, and heavy metals that are deposited on the ground surface and flow into and pollute nearby surface waters.
- O. **Point and Non-point Source Pollution**: Point pollution comes from a single source such as the discharge from a drainage pipe. Non-point pollution comes from multiple sources such as rain water run-off.
- P. **Potential Contaminating Activity**: Any activity that has the potential to create a new discharge of contaminants or to increase the discharge of contaminants to surface or ground-waters.
- Q. **Public Water Body**: All water bodies with a surface area of 10 acres or more.
- R. **Runoff**: The volume of surface water that flows on or across the land surface during a storm event.
- S. **Sedimentation**: The deposition of sand, silt, soil or other matter into a watercourse, surface water or wetland, including that resulting from post-development surface runoff.
- T. **Sedimentation Controls**: The use of silt fences, hay bales, hay or straw mulch, and other suitable, proven methods utilized to trap water-borne sediment and provide protection against erosion until properly installed erosion controls can take effect.
- U. **Storm Event**: A period of sustained rainfall with a minimum total accumulation of 0.25 inches
- V. of precipitation over a 24 hour period.
- W. **Storm Water**: Surface water run-off from a non-point source caused by a storm event.
- x. **Tributary Stream**: Any perennial or intermittent stream, flowing either directly or indirectly into a surface water body. This shall include any tributary stream section contained within a pipe system.
- Y. **Watershed**: The area lying within the drainage basin of the lake.

330.5 Use Regulations

- A. Allowed uses established by the underlying zoning district shall apply, except as modified below.
- B. The following uses shall be specifically prohibited within the Watershed Protection Overlay District:
 1. Storage or production of hazardous materials as defined in either or both of the following:
 - a. Superfund Amendment and Reauthorization Act of 1986.
 - b. Identification and Listing of Hazardous Wastes, 40 C.F.R. §261 (1987)
 2. Disposal of hazardous materials or solid wastes;
 3. Treatment of hazardous material, except rehabilitation programs authorized by a government agency to treat hazardous material present at a site prior to the adoption of this ordinance;
 4. Any business that stores, uses or disposes of hazardous material, unless all facilities and equipment are designed and operated to prevent the release or discharge of hazardous materials and have undergone an inspection by the Town of Deerfield Building Inspector and Fire Inspector to certify they are in compliance with hazardous material regulations;

5. Disposal of septage or septic sludge, as defined by New Hampshire Solid Waste Rules Env-Wm101-300 & 2100 – 3700;
6. Automobile service and repair stations; and
7. Junkyards and Salvage Yards as defined by RSA 236:112.

330.6 Review Requirements for Development in the Watershed Protection Overlay District

- A. Development within the Watershed Protection Overlay District requires the submittal and approval of one of the following applications: Site Plan/Subdivision Watershed Application, Major Watershed Application, or Minor Watershed Application.
- B. Applications for Subdivisions and Site Plans shall be accompanied by a Site Plan/Subdivision Watershed Application inclusive of a hydrologic study as outlined in Section 330.7. The Hydrological study must document, in a manner acceptable to the Planning Board, that the proposed land development would provide the same or greater degree of water quality protection as existed on the site(s) at the time the application was made. Change of Use Applications that do not propose any new construction, paving, alterations to grading, or other alteration to the terrain are exempt from the requirements of the hydrological study.
- C. Major Application. For any development that will render post-development impervious surface of more than 20% or more than 2,500 square feet of the entire lot, whichever is greater, a stormwater management and erosion control plan, consistent with New Hampshire Stormwater Manual (latest edition) prepared by NH DES, shall be prepared and submitted for review and approval as part of a Major Watershed Application unless previous approval has been granted through the Site Plan/Subdivision Watershed Application process. Major Watershed Applications are reviewed and approved by the Planning Board.
- D. Minor Application. For any development that will render post-development impervious surface of 20% or less, or 2,500 sq. ft. (whichever is greater) the application will require submittal of a Minor Watershed Application for review and approval. Minor Watershed Applications are reviewed and approved by the Building Inspector.
- E. Residential Building Permit Applications for new home construction must include an erosion and sedimentation control plan developed with Best Management Practices. The erosion and sedimentation control plan shall be prepared by an engineer licensed in the State of New Hampshire or a qualified professional who is familiar with erosion control measures and procedures and acceptable to the Town Engineer. The erosion and sedimentation control plan shall be submitted as part of the Major or Minor Watershed Applications involving the construction of a new home.
- F. Residential Building Permit Applications for additions to existing structures, accessory buildings or reconstruction of existing homes must include erosion and sedimentation controls proposed by the applicant and acceptable to the Building Inspector. *The Building Inspector's review shall be based on the applicant's compliance with Best Management Practices.* These types of applications shall not require the preparation of an erosion and sedimentation control plan prepared by an engineer.
- G. Development shall not begin until all required applications, submittals and permit approvals have been obtained unless an emergency determination has been made in accordance with Section 330.12. No building permit for development within the Watershed will be issued without an approved Watershed Application on file.
- H. All development within the Watershed Protection Overlay District shall be evaluated to ensure that:

1. No new impervious driveways are allowed within 75 feet of any surface water or wetland area. Accessory structures are allowed within the 75 foot setback when permitted by the NH DES.
2. The impervious surface of any lot is limited to 30%. For lots that currently exceed 30% impervious surface, development must decrease the percent of impervious surface. Replacement in-kind of existing development does not require this reduction of impervious surface.
3. Non-point source pollution is prevented to the maximum extent possible, taking into account site conditions such as slope, soil type and erosivity and vegetative cover.
4. Best Management Practices (BMPs) are in place and are sufficient to remove or neutralize those pollutants that present a potential impact to the water body. The use or creation of detention ponds is not allowed for runoff control, except in those cases where an extended detention pond may be necessary to develop a site.
5. Grading and removal of vegetation at a development site is minimized and erosion and sedimentation control measures are in place and properly installed.
6. If two or more dwelling units share a common sewage treatment system a perpetual maintenance agreement from the building's owner is required.
7. Uses that may potentially cause contamination within the Watershed Protection Overlay District, must submit a spill prevention control and countermeasures plan for approval. This plan shall include the following elements:
 - a. Disclosure statements describing the types, quantities, and storage locations of all contaminants that will be part of the proposed project.
 - b. Contaminant handling and spill prevention techniques.
 - c. Spill reporting procedures, including a list of affected agencies to be contacted in the event of a spill.
 - d. Spill recovery plans, including a list of available equipment.
 - f. Spill cleanup and disposal plans.

330.7 Hydrologic Study and Plan

- A. A hydrologic study shall be prepared by a professional engineer licensed in the State of New Hampshire and shall include the following information:
 1. Description of the proposed project including location and extent of impervious surfaces; on-site processes or storage of materials; the anticipated use of the land and buildings; description of the site including topographic, hydrologic and vegetative features.
 2. Characteristics of natural runoff on the site and projected runoff with the proposed project.
 3. Measures proposed to be employed to minimize the rate of runoff and pollutant loading of runoff from the project area, both during construction and after.
 4. Proposed runoff control and watershed protection measures for the site. These measures shall be designed with the goal of ensuring that the rate of surface water runoff from the site does not exceed pre-development conditions and that the quality of such runoff will not be less than pre-development conditions. Special emphasis shall be placed on the impacts of proposed encroachments into the required buffer.
 5. Where the developer of property subject to the terms of this Watershed Protection Ordinance seeks to utilize existing or planned off-site storm-water quality management facilities, the

developer shall provide a written certification that the owner of the off-site facilities will accept the runoff and be responsible for its adequate treatment and that the arrangement will run with the land in a manner that will be acceptable to the Planning Board.

- B. The study shall make use of the September 2002 Lake and Watershed Diagnostic Study Report of Pleasant Lake Deerfield/Northwood prepared by NHDES and any other appropriate data available from NHDES to the maximum extent possible. If new data is to be relied upon, the Town reserves the right to have the data reviewed by an independent expert at the expense of the developer, before the study is deemed complete and ready for review.
- C. The study shall be submitted to the Planning Board for review and approval concurrently with the submission of applications for review as required by this Ordinance.

330.8 Buffer Requirements

- A. A minimum 100-foot wide buffer zone shall be maintained along the edge of any tributary stream discharging into Pleasant Lake and along the edge of any wetlands associated with those tributary streams. The required buffer distance shall be measured from the centerline of such tributary stream and from the delineated edge of a wetland. Streams shall be delineated from their mean high water mark. The buffer zone shall be maintained in its natural state to the maximum extent possible.
- B. Any reduction in the required buffer zone width down to an absolute minimum of 50 feet may be granted by the Planning Board upon presentation of a hydrologic or other study that provides documentation and justification, acceptable to the Planning Board, that even with the reduction, the same or a greater degree of water quality protection would be afforded as would be with the full-width buffer zone. In granting such a reduction, the Planning Board may require certain conditions of approval which may include, but are not limited to, restrictions on use, type of construction, and erosion, runoff or sedimentation control measures as deemed necessary to protect water quality.
- C. Any proposed development within the required buffer zone shall require approval of the Planning Board.
- D. The following uses shall not be permitted within the buffer zone:
 - 1. Subsurface sewerage disposal systems and drain-fields
 - 2. Livestock impoundments
 - 3. Trash containers and dumpsters which are not under roof or which are located so that leachate from the receptacle could escape unfiltered and untreated
 - 4. No outside fuel storage
 - 5. Activities involving the manufacture, bulk storage or any type of distribution of materials hazardous to Pleasant Lake as defined in the Hazardous Materials Spills Emergency Handbook, American Waterworks Association, 1975, as revised, including specifically the following general classes of materials
 - a. Oil and oil products
 - b. Radioactive materials
 - c. Any material transported in large commercial quantities that is a very soluble acid or base, highly biodegradable, or can create a severe oxygen demand
 - d. Biologically accumulative poisons
 - e. The active ingredients of poisons that are or were ever registered in accordance with the provisions of the Federal Insecticide, Fungicide, and

- Rodenticide Act, as amended (7 USC 135 et seq.)
- f. Substances lethal to mammalian or aquatic life
 - g. Road salt
 - h. Lawn fertilizers

330.9 Septic Systems

- A. For any new construction, a sewage disposal system shall be installed in accordance to NH DES regulations requiring a 75 foot setback from Hydric-A soils and a 50 foot setback from Hydric-B soils from any surface water or wetland area.
- A. For any expansion of an existing structure, or the seasonal conversion of an existing structure, the owner shall conform to RSA 485-A: 38 and the associated Department of Environmental Services Code of Administrative Rules for Subdivision and Individual Sewage Disposal System Design Rules, as amended.
- C. For a new subdivision development for which **sewerage disposal systems** are proposed, if the lots are less than 5 acres, then all plans and permit application shall conform to all relevant NH DES rules and regulations. For lots that are greater than 5 acres, all plans and permit applications shall show an area of 4000 sq. ft., within which the EDS may be located, with test pit and percolation test data to verify the site's suitability for a septic system.
- D. If any septic assessment or an on-site inspection indicates that the existing system is in failure, a plan for a replacement system shall be submitted to NH DES within 30 days from the date of the onsite inspection.

330.10 Commercial Agriculture Activities

- A. Livestock are not allowed direct access to Pleasant Lake or its tributaries. Drinking water for livestock shall be provided by the use of container(s) located a minimum of 100' from Pleasant Lake, tributaries that flow into the Lake or associated wetlands.
- B. Application of fertilizers or pesticides is not allowed within 200 feet from Pleasant Lake or its tributaries or wetlands.
- C. All livestock grazing and feeding areas **shall be a minimum of 100 feet away from Pleasant Lake or its tributaries.**
- D. **All runoff from livestock feeding areas shall be managed to prevent direct discharge to Pleasant Lake or its tributaries or wetland area.**
- E. The storage and use of all animal manure for fertilization purposes must be conducted in accordance with the Best Management Practices for the Handling of Compost, Fertilizer, and Manure in New Hampshire, NH Department of Agriculture, Markets and Food.
- F. Unless stricter setbacks or operational requirements are outlined above, all agricultural operations shall be conducted in accordance with the Manual of Best Management Practices for Agriculture in New Hampshire, NH Dept. of Agriculture, June 1993, as amended, and in accordance with all appropriate sections of the Comprehensive Shoreland Protection Act, NH RSA 483-B.

330.11 Commercial Forestry Activities

- A. A minimum 75-foot undisturbed natural vegetated buffer shall be maintained adjacent to all tributaries, surface waters or wetland areas.
- B. Unless stricter setbacks or operational requirements are outlined above, all forestry operations shall be conducted in accordance with the Best Management Practices for Erosion Controls on Timber Harvesting Operations in New Hampshire, NH Division of Forests and Lands, February 2004, as amended, and in accordance with all appropriate sections of the Comprehensive Shore land Protection Act, as detailed in RSA 485-A: 17.

330.12 Emergency Exceptions

- A. Emergency situations relating to public health, safety, and welfare will be temporarily relieved of the provisions of this ordinance in order to correct the emergency and restore the property to its previous condition as soon as possible.
- B. The determination as to whether or not a situation is classified as an emergency shall be made by the Building Inspector.
- C. Within ten (10) business days of the determination being made, an application must be submitted as required by the provisions of this ordinance.

330.13 Non-Conforming Lots, Uses and Structures

- A. It is the intent of this Ordinance to promote the conforming use of land located within the Pleasant Lake Watershed Protection District, except that non-conforming lots, structures and uses that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements as set forth in this section. Except as otherwise provided in this Ordinance, a non-conforming lot, use or structure shall not be permitted to become more non-conforming.
- B. Non-conforming lots: Non-conforming undeveloped lots of record that are located within the Watershed Protection District shall comply with the following restrictions, in addition to any other requirements of this ordinance:
 - 1. Except when otherwise prohibited by law or the Town of Deerfield Zoning Ordinance, present and successive owners of an individual undeveloped lot may construct a building or structure on it, notwithstanding the provisions of this Ordinance.
 - 2. Conditions may be imposed which, in the opinion of the Zoning Board of Adjustment as appropriate, more nearly meet the intent of the Ordinance, while still accommodating the applicant's rights.
 - 3. Building on non-conforming lots of record also include but are not limited to docks, piers, boathouses, boat loading ramps, walkways and other water dependent structures, consistent with this Ordinance and applicable regulations of the NHDES.
- C. Non-conforming uses: Existing uses which are non-conforming under this Ordinance may continue until the use ceases to exist or the use is discontinued for a period of one year. An existing non-

conforming use may not be changed to another non-conforming use; existing non-conforming uses shall be required to meet the requirements of this ordinance to the maximum extent possible.

- D. Non-conforming structures: Except as otherwise prohibited, non-conforming structures, erected prior to the effective date of this Ordinance or amendments thereto, located within the Watershed Protection District may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but no expansion of the existing footprint or outside **horizontal** dimensions shall be permitted. An expansion that increases the sewage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require NHDES approval.

330.14 Subdivisions and Waterfront Access:

- A. Lots within the Watershed District shall not be used as a common areas for Waterfront Access or for the purpose of granting deeded rights or access to residents of multiple units and / or non-waterfront properties, regardless of the location of such properties.
- B. For the purpose of this section, the term "common area" shall mean an area used by a group of 3 or more unrelated persons or by an association, club or organization consisting of 3 or more members.
- C. Rights to gain access to a water body by or through a shore land lot shall not be created or attached to any real estate.
- D. Existing common areas with deeded rights for waterfront access are exempt from this provision. However, additional rights for access are not allowed to be added.