

ARTICLE 4, SECTION 5 Watershed Protection (Adopted March 8, 2005; Repealed and Replaced March 9, 2021)

4.5.1 Authority and Statement of Intent

Pursuant to RSA 674: 21, as may be amended from time to time, the Town of Deering adopts a Watershed Protection Overlay Zone, and accompanying requirements to ensure the protection and preservation of Deering Reservoir, hereafter referred to as Deering Lake, the Deering Lake watershed and the water bodies within the Watershed Protection Overlay Zone from the effects of point and non-point source pollution or sedimentation. Further, under the provisions of RSA 674:21, as may be amended from time to time, the Planning Board is hereby authorized to issue Conditional Use Permits (CUP) in accordance with this Article, and shall be considered at a public hearing in accordance with the provisions of RSA 676:4, as may be amended from time to time. Further, the Planning Board is also authorized to utilize the Site Plan Regulations, as described below, to administer select and specified provisions of this Article. The establishment of the Watershed Protection Overlay Zone and the adoption of these regulations are intended:

- a) to protect public health;
- b) to protect aquifers, which serve as existing or potential water supplies, and the aquifer recharge system;
- c) to protect surface waters and wetlands contiguous to surface waters;
- d) to mitigate the impacts of stormwater runoff;
- e) to minimize the potential for the contamination of groundwater and surface water;
- f) to protect the natural areas and wildlife habitats within the Watershed Protection Overlay Zone by maintaining ecological balances; and,
- g) to prevent the degradation of the water quality through the regulation of land uses and development within the Watershed Protection Overlay Zone.

4.5.2 Applicability

- a) All proposals for Development and/or Redevelopment (as defined in this Article), on lots falling wholly and/or partially within the Watershed Protection Overlay Zone, must secure a CUP from the Planning Board prior to applying for a building permit from the Building Inspector.
- b) The boundaries of the Watershed Protection Overlay District are as depicted on the Official Zoning Map of the Town of Deering located at Town Hall and on the Town's website.

4.5.3 Administration

Administration of this Article shall be as follows:

- a) Deering Planning Board: The Planning Board is hereby authorized to issue CUPs in accordance with RSA the authority granted in 674:21, as may be amended from time to time, and, as described in Section 4.5.2 above. Additionally, the Planning Board is further authorized:
 1. To adopt any application forms for the administration of this Article and may use standards as may be specifically described in the Site Plan Regulations as pertaining to CUP applications in the Watershed Protection Overlay Zone;
 2. To revise and amend application forms and Watershed Protection Overlay Zone standards depicted in the Site Plan Regulations shall be in accordance with RSA 674:44, as may be amended from time to time;
 3. To enact requirements in the Deering Site Plan Regulations that are consistent with and in support of the purpose(s) of this ordinance in setting forth appropriate criteria for the proper review of any applications under this Section.
 4. To grant waivers for required application materials in a manner consistent with the waiver process as described in the Site Plan Regulations; and,
 5. To contract with consultants, at the expense of the applicant, including planners, engineers, attorneys, hydrologists and other professionals to aid in review of application materials.

- b) The Deering Select Board: The Select Board is also here by authorized to adopt and adjust any fees pertaining to the application in accordance with state statute.

- c) Deering Building Inspector: Once a CUP is granted by the Planning Board in accordance with this Article, the applicant then may apply for a Building Permit with the Deering Building Inspector. The Building Inspector shall not issue Building Permits prior to the approval of any pending CUP application.

- d) Complete applications for a CUP as described in this Article shall comply with the Completed Application for Watershed Protection Conditional Use Permit Section of the Town of Deering Site Plan Regulations.

- e) The Planning Board is authorized to grant relief from the provisions of this Article in accordance with the Waiver Request Process for Application for Watershed Protection Conditional Use Permit Section of the Deering Site Plan Regulations.

- f) The Planning Board is authorized to approve or deny applications for Conditional Use Permits in accordance with the Conditional Use Permit Review Criteria requirements of the Deering Site Plan Regulations.

4.5.4 Prohibited Uses

Permitted uses, special exception uses, accessory uses, dimensional standards and special requirements established by the underlying zoning district shall apply, except as may be relieved by the Zoning Board of Adjustment or as may be modified below:

The following uses shall be specifically prohibited on lots within the Watershed Protection Overlay Zone:

- a) Storage or production of hazardous materials as defined in either or both of the following:
- Superfund Amendment and Reauthorization Act of 1986.
 - Identification and Listing of Hazardous Wastes, 40 C.F.R. §261 (1987).
- b) Disposal of hazardous materials as defined above, or solid wastes as defined by NHDES.
- c) 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.
- d) Dry-cleaning, dyeing, printing, photo processing and any other business that stores, uses, or disposes of hazardous material in amounts greater than five gallons, 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 Deering Code Enforcement Officer to certify they are in compliance with hazardous material regulations. Further, such uses shall also require a Spill Prevention Control and Countermeasures Plan (SPCC) as described in Section 4.5.7 of this Article. Home heating oil tanks, stored in a basement and serving a single-family home or duplex, shall not be required to complete an SPCC.
- e) Disposal of septage or septic sludge, as defined by New Hampshire Solid Waste Rules Env-Wm101-300 & 2100 - 3700, as may be amended from time to time.
- f) Automobile service and repair stations.
- g) Uses that will result in the release or introduction of pollutants, as defined in this Article, into Deering Lake either directly or via one or more of its tributaries.

- h) Junkyards and Salvage Yards as defined by RSA 236:112, as may be amended from time to time.
- i) Runoff from any animal pen, kennel, fowl or livestock containment area.
- j) Single family homes or duplexes that locate a home heating oil tank outside of the basement. Such uses shall require a SPCC in accordance with Section 4.5.7 of this article.
- k) Dumpster washout and disposal of any regulated substances in a dumpster.

4.5.5 District Standards

The Planning Board is authorized to develop, enforce, or waive various requirements of this District in the Site Plan Regulations.

4.5.6 Hydrologic Study

To assist the Planning Board with assessing the impact of a proposed development on the watershed, it may require a hydrological study as part of the Site Plan Regulations.

4.5.7 Spill Prevention Control and Countermeasure Plan

Proposals that, in accordance with this Article, require a Spill Prevention Control and Countermeasure Plan (SPCC) shall create a plan in accordance with the thresholds described in this Section. Further, the SPCC shall be recorded at the Hillsborough County Registry of Deeds at the applicant's expense. All SPCCs shall comply with current United States Environmental Protection Agency (US EPA) and New Hampshire Department of Environmental Services (NHDES) requirements. In the event of conflict between the SPCC requirements described in this Article and US EPA and/or NHDES, the current US EPA and/or NHDES standards shall apply. Single family homes and duplexes which locate home heating oil tanks in basements shall not require an SPCC.

a) Types of, and Thresholds for SPCCs:

1. An EPA "Tier 1" facility not requiring a Professional Engineer-developed SPCC must demonstrate all of the following:
 - a. Facility near the water (i.e. in the District) with total above ground oil storage capacity of 10,000 OR LESS and no individual above ground oil container GREATER than 5,000 gallons; and,
 - b. No single oil spill larger than 1,000 gallons to the lake, tributaries, or wetlands; and,
 - c. No two spills within a 12-month period exceeding 42 gallons each to the lake, tributaries, or wetlands.

2. An EPA "Tier 2" facility not requiring a Professional Engineer-developed SPCC must demonstrate all of the following:
 - a. Facility near the water (i.e. in the District) with a total aboveground oil storage capacity of 10,000 gallons or less AND STORES oil or oil products in an individual above ground oil container with a capacity GREATER than 5,000 gallons; and,
 - b. No single oil spill larger than 1,000 gallons to lake, tributaries, or wetlands; and,
 - c. No two spills within a 12-month period exceeding 42 gallons each to lake, tributaries, or wetlands.
3. Developments that are neither an EPA Tier 1 or Tier 2 facility shall utilize a Professional Engineer licensed to do business in New Hampshire to develop the SPCC. The SPCC shall comply with current NHDES and US EPA requirements.

b) Elements of SPCCs:

- a. Tier 1 and Tier 2 facilities shall use the US EPA recommended format. Templates may be found at: <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/tier-i-qualified-facility-spcc-plan-template>. In the event the aforementioned web link changes it is the responsibility of the applicant to locate the current template as promoted by US EPA.
- b. Developments requiring a Professional Engineer-developed SPCC shall contract with a Professional Engineer, at the applicant's expense, to develop the SPCC. The final SPCC shall reflect current US EPA and NHDES standards and shall be stamped by the Professional Engineer who developed it.

4.5.8 Buffer Requirements

- a) The 50' buffer from Deering Lake as described in Article 4.7.7.a shall be maintained.
- b) A 75-foot-wide buffer zone shall be maintained along the edge of any tributary stream discharging into Deering Lake and along the edge of any wetlands associated with those tributary streams. The required setback distance shall be measured from the centerline of such tributary stream and from the delineated edge of a wetland. Streams and wetlands shall be delineated from their mean high-water mark. The buffer zone shall be maintained in its natural state to the maximum extent possible.

- c) A reduction in the required 75-foot buffer zone width, as described in 4.5.8.b above, to down to not less than fifty feet (50') 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 75 foot wide buffer zone. In granting such a reduction, the Planning Board may require certain conditions of approval which may include, but are not necessarily limited to, restrictions on use or type of construction, and additional erosion, runoff or sedimentation control measures, as deemed necessary to protect water quality. (Amended March 15, 2008).
- d) All accessory structures, including but not limited to storage sheds, pump houses, woodsheds and gazebos, but excluding automobile and other vehicle garages, may be located within the buffer zone by Conditional Use Permit provided, that in the opinion of the Planning Board, all of the following requirements have been met:
 - 1. The structure is situated greater than 20 feet from the reference line; and,
 - 2. There is no significant disturbance of soil, such as but not limited to: excavation, a subsurface foundation, the use of sono tubes, ground leveling or the addition of gravel or similar material; and,
 - 3. The Town of Deering Planning Board (or designee if he or she is so empowered by the Planning Board) determines that construction and dimensions of the structure are consistent with the intent of Article 4 and this Article to maintain a natural vegetated buffer within the Shoreland Protection District and the Watershed Protection Overlay; and,
 - 4. The structure meets the requirements of RSA 483-B:4.

4.5.9 Natural woodland buffer

A natural woodland buffer shall be maintained in the Watershed Protection overlay district. This buffer shall comply with the specifications and point system as described in Article 4, Section 4.4.7, provided however the 2,500 square foot segments shall be 75 feet deep or such reduced width if a reduction has been granted by the Planning Board as specified above.

4.5.10 Prohibited uses within the Buffer Zone or within 25 feet of the buffer zone

The following uses shall not be permitted within the buffer zone or within twenty-five feet (25') of any required buffer zone:

- a) those uses prohibited in Section 4.5.4;

b) sub-surface waste water disposal tanks (aka septic tanks) and drain-fields (aka leach fields);

c) feed lots or other livestock impoundments;

d) trash containers and dumpsters which are not under roof and on an impervious surface, or, which are located so that leachate from the receptacle could escape unfiltered and untreated;

e) fuel storage in excess of fifty (50) gallons [200L] excluding home heating oil tanks situated inside an enclosed basement with a cement floor;

f) sanitary landfills;

g) lawns;

g) activities involving the manufacture, bulk storage or any type of distribution of petroleum, chemical or asphalt products or any materials hazardous to Deering Lake (as defined in the Hazardous Materials Spills Emergency Handbook, American Waterworks Association, 1975, as revised) including specifically the following general classes of materials:

- oil and oil products;
- radioactive materials
- any material transported in large commercial quantities that is a very soluble acid or base, highly biodegradable, or can create a severe oxygen demand;
- biologically accumulative poisons;
- 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.);
- substances lethal to mammalian or aquatic life; or,
- road salt.

h) A permanent sanitary waste system not part of an approved NHDES septic system.

4.5.11 Definitions

The following definitions are specific to the implementation of this Article. In the event of conflict with other definitions in the Deering Zoning Ordinance, these definitions shall control.

a) Connex: Also known as shipping containers, freight containers, ISO containers, intermodal containers, portable storage units, are closeable/lockable containers that can be transported and shipped by truck, train, or ocean-going vessel made of a durable substance including but not limited to industrial-grade steel. They are used for commercial and residential need.

- b) Development: Shall mean and be limited to the following activities: site plan application, subdivision applications, sheds, permanent storage containers or structures, new construction of any building, structure to be used for storage longer than 120 days, connex or similar enclosed mobile storage structure.
- c) Dumpster: A container used for the temporary storage of rubbish, trash or other waste, pending collection, and having a capacity of at least two cubic yards.
- d) Mobile Storage Structure: SEE CONNEX.
- e) Pollutant: The contamination or other alternation of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.
- f) Redevelopment: To demolish and replace existing buildings or to increase the overall floor area existing on a property; or both, irrespective of whether a change occurs in land use. Includes any proposed expansion, or addition, to an existing building, structure, or parking facility or driveway.
- g) Shed: An enclosed structure, "stick built" or prefabricated, designed for storage of tools and other materials outside. Does not include barns or garages.
- h) Site Plan Application: A formal application for site plan approval made in accordance with the provisions of the Deering Site Plan Regulations.
- i) Subdivision Applications: A formal application for subdivision approval made in accordance with the provisions of the Deering Subdivision Regulations.
- j) Watershed Protection Overlay Zone: Shall mean the protected watershed area and all applicable buffers that surround them.