

Section 13 Riparian and Wetland Buffer District Ordinance

Section 1. Title and Authority

19.13.1.A. Title: This Ordinance shall be known as the “Riparian and Wetland Buffer District Ordinance” of the City of Somersworth, New Hampshire.

19.13.1.B. Authority: Pursuant to the authority granted by RSA 483-B:8, Municipal Authority; RSA 674:17 I., Purposes of Zoning Ordinances; RSA 674:21, Innovative Land Use Controls; this ordinance is hereby adopted by the City of Somersworth, New Hampshire to protect the public health, safety, and general welfare.

Section 2. Purpose

19.13.2.A. The purpose of this ordinance is to protect the quality of surface waters and wetlands; to protect riparian and aquatic ecosystems; and to provide for the environmentally sound use of land resources.

19.13.2.B. The streams and rivers of Somersworth supply much of the water required by Somersworth citizens for their drinking water supply and other municipal and industrial uses. The Somersworth City Council finds that the protection of the surface waters and wetlands of Somersworth is vital to the health, safety and economic welfare of its citizens. It is the desire of Somersworth to protect and maintain surface water resources by implementing these regulations for the establishment, protection, and maintenance of a vegetated buffer adjacent to all surface water bodies and wetlands within our jurisdictional authority.

Section 3. Intent

19.13.3.A. It is therefore the intent of this ordinance to establish a riparian and wetland buffer of regulated development and limited land use adjacent to all surface water bodies and wetlands in Somersworth to preserve the economic values, public benefits and environmental resources provided by buffers including:

- 19.13.3.A.1. Protecting public and private water supplies;
- 19.13.3.A.2. Trapping sediment and other pollutants in surface runoff;
- 19.13.3.A.3. Providing groundwater recharge through infiltration of runoff;
- 19.13.3.A.4. Promoting bank stabilization and reduce erosion;
- 19.13.3.A.5. Protect riparian wetlands;
- 19.13.3.A.6. Minimizing the impact of floods;
- 19.13.3.A.7. Maintain stream base flow;
- 19.13.3.A.8. Protecting wildlife habitat by providing shade from tree canopy;
- 19.13.3.A.9. Generally maintaining water quality; and
- 19.13.3.A.10. Providing scenic value and recreational opportunity.

Section 4. Applicability

- 19.13.4.A. Riparian and Wetland Buffer District. The Riparian and Wetland Buffer District of the City of Somersworth, New Hampshire is an overlay district superimposed over the existing conventional zoning districts of the municipality. It includes within its boundary a protected shoreland on either side of all 1st, 2nd, 3rd and 4th order and higher rivers and streams, a protected shoreland adjacent to all surface waters, and a buffer to all wetlands located within the municipality. The Riparian and Wetland Buffer District does not apply to fire ponds and farm ponds as defined in this ordinance.
- 19.13.4.B. District Boundaries. The boundaries of the Riparian and Wetlands Buffer District (“the District”) shall encompass all land within a horizontal distance of 100 feet perpendicular from the reference line of any surface waters and wetlands as defined by this Ordinance. It is the responsibility of an applicant to fully identify and delineate on a property all surface waters and wetlands.
- 19.13.4.C. Interpretation of District Boundaries. Where uncertainty exists as to the exact location of district boundary lines, the Code Enforcement Officer or designee shall be the final authority as to boundary locations.
- 19.13.4.D. This ordinance shall apply to proposed development, structures, uses, activities and disturbance, and changes in use on all parcels of land within the Riparian and Wetland Buffer District unless otherwise specified in this Ordinance.
- 19.13.4.E. This ordinance shall apply to all timber harvesting activities not permitted under RSA 227:J.
- 19.13.4.F. This ordinance shall apply to surface mining operations except those operations that are operating in compliance with an approved permit from the City of Somersworth under Section XI Excavation of Earth Products.
- 19.13.4.G. This ordinance shall not apply to the following:
- 19.13.4.G.1. Agricultural operations that are covered by an approved Natural Resources Conservation Service (NRCS) conservation plan that includes the application of best management practices (BMPs).
- 19.13.4.G.2. Footpaths and trails composed of pervious materials and limited to six (6) feet in width with minimal removal of vegetation and configured in a manner that will not concentrate storm water runoff or contribute to erosion.

Section 5. Definitions

- 19.13.5.A. For the purposes of this chapter, the terms “shoreland” and “riparian” shall be used interchangeably to refer to uplands connected to or immediately adjacent to the shoreline or bank of a stream, river, pond, lake or reservoir and adjacent to wetlands. The terms

“riparian buffer” shall refer to the shoreline, floodplain or upland area adjacent to surface waters and “wetland buffer” shall refer to the upland area adjacent to wetlands in the Riparian and Wetland Buffer District.

- 19.13.5.B. **Best Management Practices (BMPs)** - a proven or accepted structural, non-structural, or vegetative measure the application of which reduces erosion or sedimentation, stabilizes stream channels, or reduces peak storm discharge, or improves the quality of stormwater runoff, or diminishes the quantity of stormwater runoff flowing to a single location by using multiple BMPs at separate and dispersed locations. BMPs also include construction site maintenance measures such as removing construction debris and construction waste from construction sites and disposing of debris and waste appropriately in order to reduce contamination of stormwater runoff.
- 19.13.5.C. **Base flow** – the groundwater contribution to stream flow arising from submerged springs and seeps.
- 19.13.5.D. **Canopy** – the more or less continuous vegetative cover formed by tree crowns in a wooded area.
- 19.13.5.E. **Development** is defined as:
 - 19.13.5.E.1. The improvement of property for any purpose involving building;
 - 19.13.5.E.2. Subdivision or the division of a tract or parcel of land into two or more parcels excluding condominium conversions; and,
 - 19.13.5.E.3. The preparation of land for any of the above purposes.
- 19.13.5.F. **Disturbance** – an activity in which natural vegetation is removed, soil is exposed, removed, or the land surface is altered.
- 19.13.5.G. **Farm Pond** – a depression made in the land surface or constructed with berms, usually made of earth, to detain water for irrigation, waterfowl, other farm uses or activities, or for recreation.
- 19.13.5.H. **Fire Pond** - a depression made in the land surface or constructed with berms, usually made of earth, used to store water for the purpose of fire suppression or prevention.
- 19.13.5.I. **First Order Streams** – are intermittent and perennial streams identified as either dashed lines or solid lines on the New Hampshire Hydrography Dataset (NHHD) or the most recent edition of USGS topographic maps, where mapped.
- 19.13.5.J. **Ground Cover** – any herbaceous or woody plant which normally grows to a mature height of 2 feet or less, especially mat forming vegetation which stabilizes the soil.
- 19.13.5.K. **Headwater Streams** – intermittent streams and perennial streams of first and second order.
- 19.13.5.L. **Impervious Surface** – any areas covered by material that cannot absorb water or effectively infiltrate water into the soil. Examples of impervious surfaces include buildings, roofs, decks, patios, and paved, and gravel or crushed stone driveways, paths, parking areas, and walkways.
- 19.13.5.M. **Lot of Record** – a legally created parcel, the plat or description of which has been recorded at the registry of deeds for the county in which it is located.
- 19.13.5.N. **Natural Vegetation** – trees, shrubs, herbaceous plants and other woody plants.
- 19.13.5.O. **Non-Conforming Lot** – a single lot of record, which, at the effective date of adoption or amendment of this Ordinance, does not meet the dimensional requirements of the district in which it is located or a lot that does not meet the requirements of this ordinance.
- 19.13.5.P. **Non-Conforming Structure** – a structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is

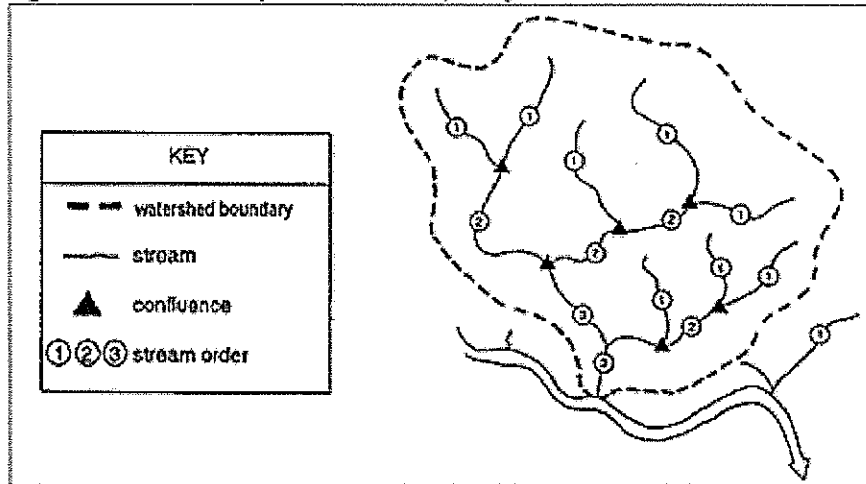
allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments take effect, or a structure that does not meet the requirements of this ordinance

- 19.13.5.Q. **Non-Conforming Use** – use of buildings, structures, premises, land or parts therefore which is not permitted in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments take effect, or a use that does not meet the requirements of this ordinance
- 19.13.5.R. **Nonpoint Source Pollution** - pollution that is generated by various land use activities rather than from an identifiable or discrete source, and that is conveyed to waterways through natural processes, such as rainfall, stormwater runoff, or groundwater seepage rather than by direct discharges.
- 19.13.5.S. **Ordinary High Water Mark** - the line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
- 19.13.5.T. **Reference Line** – is defined by this Ordinance as follows:
- 19.13.5.T.1. for natural fresh water bodies without artificial impoundments, the natural mean high water level (including the natural mean high water level for waterbodies as determined by the NH Department of Environmental Services in the List of Public Waters published by the Department pursuant to RSA 271:20.II.);
- 19.13.5.T.2. for artificially impounded fresh water bodies with established flowage rights, the limit of the flowage rights, and for water bodies without established flowage rights, the waterline at full pond as determined by the elevation of the spillway crest;
- 19.13.5.T.3. for third and fourth order and higher rivers and streams, the ordinary high water mark;
- 19.13.5.T.4. for first and second order streams, the extent of the defined channel; and
- 19.13.5.T.5. for wetlands as defined by this ordinance, the edge of wetlands
- 19.13.5.U. **Riparian and Wetland Buffer** - a vegetated area, including trees, shrubs, and herbaceous vegetation that exists or is established to protect a stream, river, lake, pond, reservoir, or wetland.
- 19.13.5.V. **Setback** – the horizontal distance from the reference line of a water body to the nearest part of a structure, road, parking space or other regulated object or area.
- 19.13.5.W. **Shoreland** – the area of land adjacent to the reference line of a stream, river, pond, lake, or other similar body of water.
- 19.13.5.X. **Stream, Ephemeral** – a drainage feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent stream.
- 19.13.5.Y. **Stream, Intermittent** – a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the conveyance of water. Intermittent streams (or portions thereof) are portrayed as dashed blue lines on a USGS topographic map, where mapped.
- 19.13.5.Z. **Stream, Perennial** - a stream that normally flows year round because it is sustained by

groundwater discharge as well as by surface water. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water. Perennial streams (or portions thereof) are portrayed as solid blue lines on a USGS topographic map, where mapped.

- 19.13.5.AA. **Stream Order** - a classification system for streams based on stream hierarchy based on the number of tributaries. The higher up in the watershed and the smaller the stream, the lower its numerical classification. For example, a first-order stream does not have tributaries and is a headwaters stream that originates from concentrated overland flow, springs and/or seeps. (See Figure 1.)

Figure 1: Stream Order (Source: Schueler, 1995)



- 19.13.5.AB. **Stream or River** – means a free-flowing body of water or segment or tributary of such water body (RSA 483:4, XVII.)
- 19.13.5.AC. **Structure** – anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on, at grade, or in the ground, excluding fences. The term includes structures temporarily or permanently located, such as but not limited to decks, patios, satellite dishes, stormwater management facilities, driveways, septic systems and parking lots.
- 19.13.5.AD. **Stormwater or Surface Water Runoff** – water that flows over the surface of land resulting from rainfall or snowmelt. Surface water enters streams and rivers to become channelized stream flow.
- 19.13.5.AE. **Stormwater Management Plan** – an analysis and plan designed in accordance with rules adopted by the NH DES under RSA 541-A for terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.
- 19.13.5.AF. **Surface Waters and Water Bodies** – those portions of waters of the state as defined by RSA 482-A:4, which have standing water or flowing water at or on the surface of the ground. This includes but is not limited to rivers, streams, lakes, and ponds (Env-Wt 101.88).
- 19.13.5.AG. **Surface Water Pollution** - contamination of surface water by introduction of sediment, nutrients, toxicants, chemicals, pesticides or fertilizer derived from a land use, activity or point source.
- 19.13.5.AH. **Vernal Pool** – an ephemeral shallow surface water body in a depression that lacks a permanent outflow, fills with water seasonally (mostly during spring and early summer),

and generally dries out for most of the year. (adapted from U.S. Fish & Wildlife Service and Vernal Pools: Natural History and Conservation by Elizabeth A. Colburn, 2004).

- 19.13.5.AI. **Water Dependent Use or Structure** – a use or structure that services and supports activities that require direct access to, or contact with the water, or both, as an operational necessity and that requires a permit under RSA 482-A, including but not limited to a dock, pier, breakwater, beach, boathouse, retaining wall, or launching ramp. Hydroelectric facilities, including, but not limited to, dams, dikes, penstocks, and powerhouses, shall be recognized as water dependent structures; however, these uses are exempt from the requirements of this Ordinance.
- 19.13.5.AJ. **Wetland** - an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions (RSA 482-A:2). For the purpose of this ordinance, vernal pools shall be included in this definition.

Section 6. Riparian Buffer and Wetland Buffer Requirements

- 19.13.6.A. The riparian buffer and wetland buffer shall consist of a strip of land extending 100 feet perpendicular from the reference line and along the full boundary of all surface water bodies and wetlands. As described in Section VI.B., the riparian and wetland buffer width shall be adjusted to include contiguous areas such as steep slopes or erodible soils, where development or disturbance may adversely affect surface waters and wetlands.
- 19.13.6.B. The riparian buffer and wetland buffer width shall be modified if steep slopes are within close proximity to or drain into surface water bodies and wetlands. In those cases, the riparian and wetland buffer width shall be expanded to include all contiguous slopes greater than 20 percent as measured over a 10-foot horizontal interval.
- 19.13.6.C. **Vegetated Buffer.** The following standards apply to maintenance of a vegetated buffer:
- 19.13.6.C.1. The vegetated buffer shall be those protected shorelands within 0 to 50 feet of the reference line of all streams, lakes, ponds and wetlands. The purpose of this buffer shall be to protect the quality of public waters while allowing property owner discretion with regard to water access, safety, viewscape maintenance, and lot design.
- 19.13.6.C.2. Within the vegetated buffer all of the following prohibitions and limitations shall apply:
- 19.13.6.C.2.a. No chemicals, including pesticides of any kind or fertilizers of any kind except those specified in RSA 483-B:9, II(d) as amended from time to time, shall be applied.
- 19.13.6.C.2.b. Rocks and stumps and their root systems shall be left intact in the ground.
- 19.13.6.C.2.c. No natural ground cover shall be removed except as necessary for a foot path to water as provided herein.
- 19.13.6.C.3. Starting from the northerly or easterly boundary of the property, and working along the shoreline, the vegetated buffer shall be divided into 50 by 50 foot segments. Within each segment a minimum combined tree and sapling score of at

least 50 points shall be maintained. If for any reason there is insufficient area for a full segment, the number of points required to be maintained in the partial segment shall be proportional to that required of a full segment.

19.13.6.C.3.a.

Tree and sapling diameters shall be measured at 4½ feet above the ground and are scored as follows:

Diameter	Score
1 inch to 6 inches	1
greater than 6 inches to 12 inches	5
greater than 12 inches	10

19.13.6.C.3.b.

Dead, diseased, or unsafe trees or saplings shall not be included in scoring. If the total tree and sapling score in any 50 foot by 50 foot segment exceeds 50 points, then trees and saplings may be removed as long as the sum of the scores for the remaining trees and saplings in that segment does not total less than 50 points. Trees and saplings may be removed from partial segments provided that the sum of the scores for the remaining trees and saplings in that partial segment is equal to or greater than the proportional point requirement.

19.13.6.C.3.c.

19.13.6.C.3.d.

Any action that would result in a combined tree and sapling score less than the minimum score required where the segment initially meets the minimum score or would result in any reduction of the combined tree and sapling score where the segment does not initially meet the minimum score is not permitted.

19.13.6.C.3.e.

Where the Planning Board, after review and comment by the Conservation Commission, determines that an analysis of the tree points on the property is not necessary to determine the merits of an application, it may waive the requirement that an applicant undertake such an analysis. Any waiver shall be provided in writing and shall be included in the application for a Conditional Use permit.

19.13.6.C.3.f.

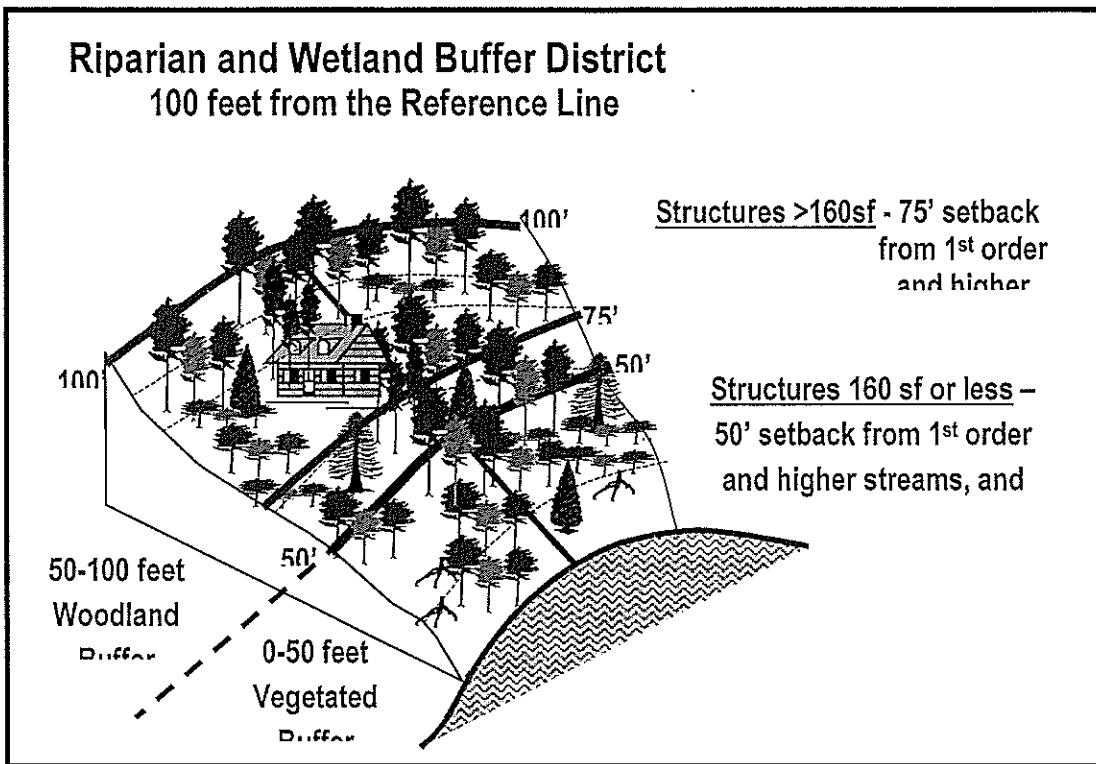
Owners of lots that were legally developed prior to the effective date of this ordinance may maintain but not enlarge cleared areas, including but not limited to existing lawns and beaches, within the vegetated buffer. Conversion to or planting of cleared areas with native species of ground cover, shrubs, saplings, and trees is encouraged but shall not be required unless it is necessary to meet the requirements.

19.13.6.C.4

Normal trimming, pruning, and thinning of branches to the extent necessary to protect structures, maintain clearances, and provide views is permitted. Trimming, pruning, and thinning of branches for the purpose of providing views shall be limited to the bottom 1/2 of the trees or saplings.

19.13.6.C.5.

When necessary for the completion of water-dependent construction activities, a temporary 12 foot wide access path shall be allowed. The access path shall be completely restored and replanted with native vegetation upon completion of construction.



- 19.13.6.D. Woodland Buffer. A natural woodland buffer shall be maintained from 50 to 100 feet of the reference line. The purpose of the natural woodland buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland. The following standards apply to maintenance of a woodland buffer:
- 19.13.6.D.1. At least 50 percent of the area outside of impervious surfaces shall be maintained in an undisturbed state. Owners of lots legally developed prior to the effective date of this ordinance that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area maintained in an undisturbed state, except as may be required as part of a Conditional Use Permit. The percentage of area maintained in an undisturbed state on nonconforming lots shall not be decreased.
- 19.13.6.D.2. Dead, diseased, or unsafe, trees, saplings, or shrubs that pose an imminent hazard to structures or have the potential to cause personal injury may be removed regardless of any requirements that pertain to the natural woodland buffer under this chapter. Such exemptions shall not be used to contravene the intent of the law.
- 19.13.6.D.3. Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.
- 19.13.6.D.4. Native species planting efforts that are beneficial to wildlife are encouraged.
- 19.13.6.E. The total area of impervious surface on any lot or portion of a lot within the Riparian and

Wetland Buffer District shall not exceed ten percent (10%). The percent impervious surface area shall be calculated based on the area of any parcel or lot located within the Riparian and Wetland Buffer District.

- 19.13.6.F. **Setbacks for Structures.** Within the Riparian and Wetland Buffer District, structures shall be located a minimum distance of 75 feet from the reference line of all first order and higher streams, lakes, ponds, reservoirs and wetlands. Structures of 160 square feet or less shall be located a minimum distance of 50 feet from the reference line of all first order and higher streams, lakes, ponds, reservoirs and wetlands.
- 19.13.6.G. All stormwater runoff from residential and commercial development must be treated before discharge within the Riparian and Wetland Buffer District in accordance with the standards of the City of Somersworth Site Plan Regulations and Subdivision Regulations.
- 19.13.6.H. A site plan, in accordance with the requirements of Section VIII, shall be submitted to the Code Enforcement Officer with all applications for a building, grading or clearing permit or other disturbance proposed within the Riparian and Wetland Buffer District.
- 19.13.6.I. Any development activities on any properties determined by the NHDES to be exempt from the requirements of the Comprehensive Shoreland Protection Act shall be required to secure a Conditional Use Permit from the Somersworth Planning Board in accordance with the provisions herein. The Planning Board shall have the authority to approve a Conditional Use Permit for these properties where full compliance with these provisions is impractical provided the Planning Board finds all the following criteria have been met:
 - 19.13.6.I.1. The proposed use is consistent with the stated purpose and intent of the district;
 - 19.13.6.I.2. All reasonably feasible measures have been taken by the applicant to protect adjacent surface waters and wetlands from adverse affects;
 - 19.13.6.I.3. All reasonably feasible measures have been taken by the applicant to comply with the provisions herein; and,
 - 19.13.6.I.4. A written recommendation on the proposal has been submitted by the Conservation Commission;
- 19.13.6.J. All municipal projects are exempt from the requirements of this ordinance.

Section 7. Riparian and Wetland Buffer District Regulations

- 19.13.7.A. Prohibited Uses, Structures and Activities The following uses, structures and activities are prohibited within the Riparian and Wetland Buffer District:
 - 19.13.7.A.1. Establishment or expansion of salt storage yards, automobile junk yards and solid or hazardous waste facilities.
 - 19.13.7.A.2. Establishment or expansion of animal feedlot operations, dry cleaning establishments, and automobile service and repair shops.
 - 19.13.7.A.3. Laundry/car wash establishments not on municipal or public sewer.
 - 19.13.7.A.4. Disposal or land application of bio-solids, including septage, sewage sludge, animal

manure.

- 19.13.7.A.5. Subsurface disposal of pollutants from sewage treatment facilities, other than on-site septic systems.
- 19.13.7.A.6. Storage of hazardous waste and substances (as defined under RSA 147-A), including but not limited to road salt, de-icing chemicals, herbicides, pesticides, or fertilizer. Limestone may be used within 25 feet of the reference line of any property.
- 19.13.7.A.7. Twenty-five to one-hundred (100) feet beyond the reference line, only low phosphate, slow release nitrogen fertilizer or limestone may be used on lawns or areas with grass.
- 19.13.7.A.8. Bulk or temporary storage of chemicals above or below ground.
- 19.13.7.A.9. Bulk or temporary storage of petroleum products or hazardous materials above or below ground, excluding normal residential or business use of liquid petroleum products and heating fuels for on-premise use.
- 19.13.7.A.10. Sand and gravel excavations (as defined in RSA 155-E).
- 19.13.7.A.11. Mining or the processing of excavated materials.
- 19.13.7.A.12. Dumping or disposal of snow and ice collected from roadways or parking areas from outside the district.

- 19.13.7.B. Conditional Uses in the Riparian and Wetland Buffer District Any development, land clearing, removal of vegetation, grading, or alteration of the land surface within the Riparian and Wetland Buffer District shall require a Conditional Use Permit from the Planning Board unless specifically exempted from these provisions. The Planning Board may grant a Conditional Use Permit, concurrently with site plan or subdivision approval or before issuance of a building permit, after proper public notice and public hearing for the following uses and activities within the District:
 - 19.13.7.B.1. The undertaking of a use not otherwise permitted by right or exemption in the District, which may include the erection of a structure, dredging, filling, drainage or otherwise altering the surface configuration of the land.
 - 19.13.7.B.2. Any waiver or variance granted by the state from the requirements of the Comprehensive Shoreland Protection Act.
 - 19.13.7.B.3. Roads, driveways, bridges, access ways, and utilities in accordance with the following standards:
 - 19.13.7.B.3.a. The applicant shall be required to provide an analysis to ensure that no feasible alternative is available to avoid or minimize impacts to the riparian and wetland buffer.
 - 19.13.7.B.3.b. The right-of-way should be the minimum width needed to allow for maintenance and installation of an access way or utility right of way.
 - 19.13.7.B.3.c. The angle of the crossing shall be perpendicular to the riparian and wetland buffers in order to minimize clearing requirements and shall be located to minimize overall disturbance to the buffer.
 - 19.13.7.B.3.d. The minimum number of road crossings should be used within each subdivision, to provide access.
 - 19.13.7.B.4. Marinas developed in accordance with the following requirements:
 - 19.13.7.B.4.a. Minimum shoreland frontage shall be 300 feet with an additional 25 feet of shoreland frontage per boat slip.
 - 19.13.7.B.4.b. Off street parking shall be provided at a rate of 360 square feet per parking

space.

- 19.13.7.B.4.c. Submission of an environmental impact study including measures to mitigate potential negative impact on the adjacent waters, including but not limited to:
 - 19.13.7.B.4.c.i. Measures to prevent leakage or spills of fuels, lubricants, wastewater and other potential pollutants into the public waters;
 - 19.13.7.B.4.c.ii. Assurances that impact on wetlands and other related sensitive areas have been avoided.
- 19.13.7.B.4.d. Submission of a site plan which includes locations of rest rooms, buildings, parking areas and all related support facilities with assurances that these facilities shall be permanently available to the project.
- 19.13.7.B.4.e. Receipt of a wetland permit from NH DES.
- 19.13.7.B.5. Water dependent uses and structures including, but not limited to, docks, wharves, boat ramps, etc. A Conditional Use Permit shall be approved only in accordance with the following requirements:
 - 19.13.7.B.5.a. The use is in keeping with the purpose and intent of this Ordinance.
 - 19.13.7.B.5.b. The least impacting route and methodology for the use have been selected as the best practicable alternative.
 - 19.13.7.B.5.c. Canopies and seasonal covers extend only over the boat slips and shall be removed during the non-boating season.

19.13.7.C. Conditional Use Permit Applications.

- 19.13.7.C.1. Before the Planning Board undertakes a conditional use review, the applicant shall make application, on forms provided in the Department of Development Services, to the Conservation Commission for review and comment. The Planning Board shall review and make part of the record any comments or recommendations from the Conservation Commission with regard to the request for a conditional use.
- 19.13.7.C.2. The Planning Board may attach such conditions to the granting of a conditional use permit as it deems necessary to carry out the purposes of the Riparian and Wetland Buffer Ordinance. Such conditions may include but shall not be limited to:
 - 19.13.7.C.2.a. Erosion control measures;
 - 19.13.7.C.2.b. Modifications in project design to maintain natural hydrologic conditions of surface water bodies and wetlands, riparian and wetland buffers, and circulation of waters;
 - 19.13.7.C.2.c. Dedication of easements to protect surface water bodies and wetlands, and riparian and wetland buffers;
 - 19.13.7.C.2.d. Modification of waste disposal and water supply facilities;
 - 19.13.7.C.2.e. Limitations on the total portion of any lot within the District that may be graded, filled or otherwise altered;
 - 19.13.7.C.2.f. Requirements that structures be elevated on piles or otherwise protected from natural hazards; and
 - 19.13.7.C.2.g. Planting or replanting of vegetation within the District and construction of new surface water bodies or wetlands equivalent to damaged or destroyed areas.
- 19.13.7.C.3. All applications for a Conditional Use Permit shall be accompanied by a site plan in accordance with the requirements of Section VIII.
- 19.13.7.C.4. The Planning Board shall act on a conditional use application within thirty (30) days

of the close of the public hearing. Except where additional information is required by the Planning Board, then such action may be extended by ninety (90) days. In acting on the application the Planning shall, in writing, deny, approve, or conditionally approve the proposed activity.

Section 8. Site Plan Requirements

- 19.13.8. A. For all development proposed within the Riparian and Wetland Buffer District, a site plan shall be submitted and include an informative, conceptual, and schematic representation of the proposed activity by means of maps, graphs, charts, or other written or drawn documents so as to enable the Planning Board an opportunity to make a reasonably informed decision regarding the proposed activity.
- 19.13.8.B. All plans submitted and prepared for recording and all right-of-way plans shall clearly:
- 19.13.8.B.1. Show the extent of any forest buffer on the subject property;
- 19.13.8.B.2. Label all riparian and wetland buffers;
- 19.13.8.B.3. Provide a note to reference any riparian and wetland buffer stating "There shall be no clearing, grading, construction or disturbance of vegetation except as permitted by the local and state regulations"; and
- 19.13.8.B.4. Provide a note to reference any protective covenants governing riparian and wetland buffers areas (if applicable stating: "Any riparian and wetland buffer shown hereon is subject to protective covenants that may be found in the land records and that restrict disturbance and use of these areas."
- 19.13.8.C. For all development proposed within the Riparian and Wetland Buffer District, a site plan shall be submitted and contain the following information:
- 19.13.8.C.1. A location or vicinity map;
- 19.13.8.C.2. The scale of plans should be 1"=50' to 1"=100' scale to provide sufficient detail of the project site and its features;
- 19.13.8.C.3. Field delineated and surveyed streams, springs, seeps, bodies of water, and wetlands (include a minimum of 200 feet into adjacent properties) with the direction of flow shown;
- 19.13.8.C.4. Field delineated and surveyed riparian and wetland buffers, with plans signed and stamped by a certified wetland scientist and a licensed professional surveyor;
- 19.13.8.C.5. Limits of the 100-year floodplain
- 19.13.8.C.6. Hydric soils mapped in accordance with the NRCS soil survey of the site area;
- 19.13.8.C.7. Slopes greater than 20 percent as measured over a ten foot interval for all lands within the Riparian and Wetland Buffer District;
- 19.13.8.C.8. Tree inventory in accordance with the standards of Section VI; and
- 19.13.8.C.9. A narrative of the species and distribution of existing vegetation within the buffer.
- 19.13.8.D. For all projects approved under a Conditional Use Permit, permanent markers in the form of signage approved by Planning Board shall be placed at the edge of the vegetated buffer to delineate the boundary. Markers shall be installed prior to any site work unless otherwise specified by the Planning Board.

Section 9 Riparian and Wetland Buffer Management and Maintenance

- 19.13.9.A. Within the District, riparian and wetland buffers shall be managed to enhance and maximize the unique value of the resource. Management includes specific limitations on alteration of the natural conditions of these resources. The following structures, practices, and activities are permitted in riparian and wetland buffers without the need to obtain a Conditional Use permit:
- 19.13.9.A.1. Tree pruning, including the removal of dead, diseased, unsafe, or fallen trees, saplings, shrubs is permitted. Individual trees that are in danger of falling, causing damage to dwellings or other structures, or causing blockage of the stream may be removed; however the required point score within the vegetated buffer shall be maintained (refer to the requirements of Section VI.C).
 - 19.13.9.A.2. Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.
 - 19.13.9.A.3. Planting and reforestation efforts to restore the natural vegetation is encouraged.
 - 19.13.9.A.4. Stream restoration projects, facilities and activities approved by the state are permitted.
 - 19.13.9.A.5. Water quality monitoring and stream gauging are permitted, as approved by the state.
 - 19.13.9.A.6. Other timber cutting techniques may be undertaken under the advice and guidance of a state or federal forestry agency or the Natural Resource Conservation Service if necessary to preserve the forest from extensive pest infestation, disease infestation, or threat from fire.
 - 19.13.9.A.7. No mechanized logging, no clear cutting of trees, and no removal of rocks or stumps, and no cutting or removal of vegetation or natural ground cover below three (3) feet in height shall be permitted with the exception of forest management that is not associated with shoreland development or land conversion, and is conducted in compliance with RSA 227-J:9 and a Notification of Forest Management or Timber Harvest Activities having Minimum Wetlands Impact Form (or its subsequent equivalent if there is a name change) has been submitted to the New Hampshire Department of Environmental Services.¹
- 19.13.9.B. Riparian and wetland buffers may be allowed to grow into a vegetated state through natural regeneration, but methods to enhance the successional process such as active reforestation may be used when deemed necessary by the Somersworth Planning Board to ensure the preservation and propagation of the buffer area. Forest buffer areas may also be enhanced through reforestation or other growth techniques as a form of mitigation for achieving buffer preservation requirements.

Section 10. Non-Conforming Lots, Uses and Structures

- 19.13.10.A. General Purpose. It is the intent of this Ordinance to promote the conforming use of land located within the Riparian and Wetland Buffer 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.

¹ Amended 04/04/2011.

- 19.13.10.B. Non-Conforming Lots. Non-conforming, undeveloped lots of record that are located within the Riparian and Wetland Buffer District shall comply with the following restrictions, in addition to any other requirements of the Somersworth Zoning Ordinance:
- 19.13.10.B.1. Except when otherwise prohibited by law, present and successive owners of an individual undeveloped lot may construct a building or structure on it, notwithstanding the provisions of this Ordinance.
 - 19.13.10.B.2. Conditions may be imposed which, in the opinion of the Somersworth Planning Board, more nearly meet the intent of this Ordinance, while still accommodating the applicant's rights.
 - 19.13.10.B.3. Building on non-conforming lots of record also include but not limited to docks, piers, boathouses, boat loading ramps, walkways, and other water dependent structures, consistent with this Ordinance.
- 19.13.10.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. Within the Riparian and Wetland Buffer District, an existing non-conforming use may not be changed to another non-conforming use and an existing nonconforming use may not be expanded. Existing non-conforming uses shall be required to meet the requirements of this ordinance to the maximum extent possible.
- 19.13.10.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 Riparian and Wetland Buffer District may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent structure. Such repair or replacement may alter the interior design or existing foundation, but no expansion of the existing footprint or outside 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 NH DES approval. Between the primary building line and the reference line, no alteration shall extend the structure closer to the adjacent water body, except that the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line.
- 19.13.10.D.1. Any applicant requesting a variance shall meet with the Somersworth Conservation Commission prior to appearing before the Zoning Board of Adjustment. The Zoning Board of Adjustment may grant a variance from these provisions only after receipt of a written recommendation from the Conservation Commission.
 - 19.13.10.D.2. All variance requests shall be accompanied by a conceptual plan depicting how the site could be developed in conformance with all provisions herein. The purpose of the conceptual plan will be to illustrate the potential of the parcel if it was required to be subject to all provisions of this ordinance.

Section 12. Conflict With Other Regulations

(19.13.11.A. Where the standards and management requirements of this buffer ordinance are in conflict with other laws, regulations, and policies regarding streams, steep slopes, erodible soils, wetlands, floodplains, timber harvesting, land disturbance activities, or other environmental protective measures, the more restrictive shall apply. (Section 13-
_____ Replaced in its entirety 02/17/2009.)

