

# **COBBETTS POND WATERSHED PROTECTION ORDINANCE**

## **SECTION 1: WATERSHED PROTECTION ORDINANCE**

### **1.1 Authority and Statement of Intent**

- a. Pursuant to RSA 674: 21, the Town of Windham adopts a Watershed Protection Overlay District and accompanying regulations to ensure the protection and preservation of Cobbett's Pond 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:
  - (1) to protect public health,
  - (2) to protect aquifers, which serve as existing or potential water supplies, and the aquifer recharge system,
  - (3) to protect surface waters and wetlands contiguous to surface waters,
  - (4) to protect the natural areas and wildlife habitats within the Watershed Protection Overlay Zone by maintaining ecological balances,
  - (5) to prevent the degradation of water quality through the regulation of land uses and development within the Watershed Protection Overlay District, and
  - (6) to assure proper used 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 Windham Zoning Ordinance or state law, the more stringent requirements shall govern.

### **1.2 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. In addition, all such proposals and activities will be required to demonstrate that they will "do no harm" to Cobbett's Pond. The boundaries of the Watershed Protection Overlay District have been delineated by the NH DES using current location data (see attachment 1).
- b. The boundaries of the Watershed Protection Overlay District may be 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. These boundaries may be modified by the Planning Board as new relevant data becomes available.

### **1.3 Administration**

- a. **General:** The Windham Planning Board shall have sole and exclusive authority to administer the provisions of the Watershed Protection Ordinance. The Planning Board is further authorized to adopt amendments to this ordinance and other regulations in order to further administer the requirements of this Watershed Protection Ordinance. All development proposals and potential contaminating activities occurring wholly or partly in an area within the Watershed Protection Overlay District shall be subject to the requirements of this Ordinance, including review and approval by the Planning Board. Such review and approval shall be in addition to any reviews and approvals required by State statute, the Windham Zoning Ordinance, or Windham regulations. Such review and approval and any and all conditions attached to an approval shall be documented consistent with the Planning Board's requirements for memorializing approvals and associated conditions before issuance of any building permit by the Town.
- b. **Enforcement:** The Code Enforcement Officer shall be responsible for enforcing the provisions and conditions of this Watershed Protection Ordinance, pursuant to the provisions of Section 1500 of Windham's Zoning Ordinance.

### **1.4 Definitions**

- a. **Buffer Zone.** The undisturbed natural area sufficient in size to mitigate runoff effects harmful to water quality
- b. **Public Water Body.** All water bodies with a surface area of 10 acres or more.
- c. **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.
- d. **Contamination.** Sedimentation, point and non-point source pollution, septage, or the discharge of

hazardous materials.

- e. 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, construction, change in use, external repair, land disturbing activity, grading, road building, and pipe laying.
- f. 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).
- g. Hydrology. The study of the earth's waters, their distribution and the cycle involving precipitation, infiltration into the soil and evaporation.
- h. Impervious surface. An area whose water absorbing characteristics are greatly reduced as compared to the natural land and therefore less easily penetrated by moisture including, but not limited to, dirt and paved roads, driveways, parking lots, sidewalks, patios, decks, and roofs.
- i. Infiltration rate. The volume of surface water that filters into the soil per unit of time.
- j. Potential Contaminating Activity. Activities that have the potential to create a new discharge of contaminants or to increase the discharge of contaminants to surface or ground-waters.
- k. Runoff Volume. The volume of surface water that runs off during a storm event.
- l. Sedimentation. The deposition of sand, silt, soil or other matter into a watercourse or wetland, including that resulting from post-development surface runoff.
- m. Storm event. A period of sustained rainfall with a minimum total accumulation of 0.25 inches of precipitation over a 24 hour period.
- n. Storm water. Surface water runoff from a non point source caused by a storm event.
- o. Tributary stream. Any perennial or intermittent stream, flowing either directly or indirectly into a public water body. This shall include any tributary stream section contained within a pipe system.
- p. Watershed. The area lying within the drainage basins of public water bodies.
- q. 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.
- r. Best Management Practices. As defined in "Innovative Stormwater Treatment Technologies, Best Management Practices Manual-May 2002" and "Best Management Practices to Control Non-Point Source Pollution, A Guide for Citizens and Town Officials-January 2004" prepared by NH DES and "Buffer for Wetlands and Surface Waters, a guidebook for New Hampshire Municipalities," May 1997 or any updated versions thereof.
- s. Low-Impact Development (LID): an approach to site development and design that provides increased opportunities for stormwater infiltration and increased hydrologic function within a watershed as defined in NH DES Fact Sheet WD-WMB-17, "Low-Impact Development: Taking Steps to Protect New Hampshire's Surface Waters", 2005 or any updated versions thereof.

#### 1.5 Use Regulations

- a. Permitted uses, special exception uses, accessory uses, dimensional standards and special requirements 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 Windham Code Enforcement Officer 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.

(7) Junkyards and Salvage Yards.

Review Requirements for Development in the Watershed Protection Overlay District

- a. General. Applications for subdivision of land and for site plan review and approval are subject to all review requirements of this Section, including the requirement in 1.6b. that they shall be accompanied by a hydrologic study. Applications for new home construction and additions, modifications and repairs of existing homes need not be accompanied by a hydrologic study but must meet the other review requirements of this Section. New home construction applications must include a soil erosion plan as set forth in 1.6c. This Watershed Protection Ordinance does not establish any pre-approval requirements for other land development proposals that do not involve potential contamination.
- b. Any application for a land development proposal involving the subdivision of land or site review and approval, occurring wholly or partly in the Watershed Protection Overlay District, shall be submitted to the Planning Board for review and approval and shall be accompanied by a hydrologic study prepared in accordance with the requirements set forth in Section 1.7. Said study must document, in a manner acceptable to the Planning Board, that the proposed land development would provide the same or a greater degree of water quality protection as existed on the site(s) at the time the application is made.
- c. All development within the Watershed Protection Overlay District will be evaluated by the Planning Board to ensure that:
  - (1) 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. The amount of lawn is limited to 10% of all dry land.
  - (2) 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. In the case of proposals for new home construction, the proposal shall include an erosion and sedimentation control plan prepared by an engineer licensed in the State of New Hampshire. The use or creation of holding-ponds is not allowed for runoff control, except in those cases where an extended detention pond may be necessary to develop a site.
  - (3) Grading and removal of vegetation at a development site is minimized and erosion and sedimentation control measures are in place and properly installed.
  - (4) All septic tanks, pump chambers, and/or holding tanks will be pumped and inspected by a State of New Hampshire licensed septic services provider to ensure proper functioning and a copy of the pumping and inspection report shall be sent to the Town Code Enforcement Officer within 30 days of pumping and inspection. Such pumping and inspection shall occur at least every three years, or more frequently if recommended by the licensed septic service provider. If two or more dwelling units share a common sewage treatment system a perpetual maintenance agreement from the building's owner is required.
  - (5) Activities involved in potential contamination within the Watershed Protection Overlay District, but which have received a special exception, 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.
    - (e) Spill cleanup and disposal plans.
    - (f) Existing land uses located within the Watershed Protection Overlay District and identified as potential contaminating activities by the Planning Board shall comply with the requirements of Section 1.6c5.

1.7 Hydrologic Study and Plan

- a. A hydrologic study shall be performed developed by a professional engineer or hydrologist 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, including its rate and chemical and/or biological characteristics deemed necessary to make an adequate assessment of water quality.
  - (3) Measures proposed to be employed to reduce 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 existing Cobbett's Pond water quality historical data 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 and approval of site or subdivision plans or applications for land disturbing or erosion and sediment control permits.

#### 1.8 Buffer Requirements

- a. A 100-foot wide buffer zone shall be maintained along the edge of any tributary stream discharging into Cobbett's Pond 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.
- b. Any reduction in the required buffer zone width 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. All development shall be located outside of the required buffer zone.
- d. The following uses shall not be permitted within the buffer zone or within twenty-five feet (25') of any required buffer zone:
  - (1) septic tanks and drain-fields;
  - (2) feed lots or other 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) fuel storage in excess of fifty (50) gallons [200L];
  - (5) sanitary landfills;
  - (6) activities involving the manufacture, bulk storage or any type of distribution of materials hazardous to Cobbett's Pond 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.

(7) No more than 50 % of basal area of timber may be cut over a twenty (20) year period.

#### 1.9 Septic Systems

- a. For any new construction, an Effluent Disposal System (EDS) 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.
- b. 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 Code of Administrative Rules for Subdivision and ISDS Design Rules, as amended.
- c. For a new subdivision development for which EDS's 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.

#### 1.10 Site Construction (Commercial / Industrial or Residential)

- a. No new impervious driveways are allowed within 75 feet of any surface water or wetland area. Accessory structures are allowed when permitted by the NH DES
- b. The impervious area of any building lot is limited to 30%. Impervious area includes building area, gravel or asphalt driveway and parking area.
- c. For any use that will render impervious more than 20% or more than 2,500 square feet of any lot, whichever is greater, a storm water management and erosion control plan, consistent with Storm water Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, Rockingham County Conservation District, August 1992, as amended, shall be prepared and submitted to the Planning Board for review. No building Permit shall be issued until such time as the Planning Board has reviewed and approved said plan.

#### 1.11 Agriculture Activities

- a. Livestock are not allowed direct access to surface waters. Drinking water for livestock shall be provided by the use of a tub or other container located a minimum of 150 feet away from any surface water or wetland. No impervious surfaces may be in the runoff trajectory from the tub or other container to the surface water.
- b. Application of fertilizers or pesticides is not allowed within 200 feet from any surface water or wetland.
- c. Application of fertilizers or pesticides is not allowed within 200 feet from any surface water or wetland.
- d. All runoff from livestock feeding areas shall be directed away from surface water or wetland area.
- e. No spreading of animal manure on fields or pastures is allowed any closer than 200 feet away from any surface water or wetland. No stockpiling of manure is allowed any closer than 200 feet from any surface water or wetland area and the stockpiling must be placed on an impervious surface and contained to prevent the release of leachate.
- 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, as amended.

1.13 Forestry (Includes all commercial forestry activities)

- a. A minimum 75-foot undisturbed natural vegetated buffer shall be maintained adjacent to all 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 2000, as amended, and in accordance with all appropriate sections of the Comprehensive Shoreland Protection Act, as amended.

1.14 Exceptions

- a. There will be no special exceptions to this ordinance unless included in the ordinance as written.
- b. All exceptions are to be complied with before any and all new construction starts, not at the date of application for a building permit.