

Wetland Buffer Ordinance for hearing 7-15-2020, Mardi Thompson comments.

§ 197-74. Wetlands.

A. Purpose: provide standards for protecting wetlands in development projects.

B. Definition: **[Amended 8-12-2019]** (1) WETLANDS — (a) Areas inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions; or

(b) Areas that are defined and delineated in accordance with the United States Army Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, as amended from time to time; or

(c) Areas that are further defined and delineated by the United States Army Corps of Engineers, the United States Environmental Protection Agency, or the Delaware Department of Natural Resources and Environmental Control (DNREC).

(2) TIDAL WETLANDS — Areas under jurisdiction of Title 7, Chapter 66, of the Delaware Code, as regulated and mapped by DNREC.

(3) NONTIDAL WETLANDS — Areas inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions and that are not defined as tidal wetlands in the City Code.

(4) TIDAL WATERS (MEAN HIGH-WATER LINE) — The mean high-water line of a tidal water body, tidal stream, or tidal marsh. The average height of all the high-tide water recorded over a nineteen-year period as defined by the National Oceanic and Atmospheric Administration tidal datum.

(5) WETLAND BUFFER - An area located upland and landward of the delineated wetlands line at the time of accepted delineation which is established or will be established with vegetation to protect the wetlands and terrestrial environment from human disturbance, even if the area was previously disturbed by human activity.

C. Official boundaries. The Official Map for tidal wetlands is prepared

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by the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Water Resources, Wetlands and Subaqueous Lands Section. **[Amended 8-12-2019]**

D. Identification on development plans and in the field.

(1) Development plans shall include a report delineating the locations of ~~all both state and federal~~ wetlands by legal description with bearings and distances and with each flag point numbered, signed, and dated. **[Amended 8-12-2019]**

(a) As part of the report, the applicant shall submit documentation from DNREC delineating and defining the area (square footage) of tidal wetlands, and this can be accomplished by submitting the completed "Jurisdictional Determination and Map Change Request Form" to the Wetlands and Subaqueous Land Section of DNREC. (b) The report should also establish the area (square footage) of the nontidal wetlands on the tract. (c) The wetlands shall be flagged and the flags shall remain on site for major subdivisions during construction of the development. (2) Wetland delineation report. (a) The report shall utilize the on-site method or process for identifying wetlands as described in the United States Army Corps of Engineers Wetlands Delineation Manual, "Technical Report Y-87-1, 1987 as amended from time to time. (b) The report shall be prepared by a person with professional experience and knowledge in wetlands identification and shall analyze a site for the existence and extent of wetlands. (3) Building lots containing wetlands shall be identified with a notation stating, "Construction activities within these sites may require a permit from the United States Army Corps of Engineers or the State of Delaware."

(4) If a tract proposed for development contains no wetlands, the plan shall include a statement affirming this from an experienced, qualified professional.

E. Permitted activities.

(1) Generally, development is not permitted in wetlands.

(2) Exception. Utility and access crossings within wetlands may

Commented [MT3]: In paragraph D.(b) "should" should be changed to "must".

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be allowed where no other recourse is available. (a) Proposed crossings must be authorized by the City and meet the requirements of the City Code, United States Army Corps of Engineers regulations, and DNREC.

(b) Any work in wetland buffer areas shall meet the requirements of the City Code, United States Army Corps of Engineers regulations, and DNREC.

F. Wetland mitigation activities. (1) Definition. Activities carried out in order to compensate for freshwater wetlands or state open-waters loss or disturbance caused by regulated activities.

(2) Before commencing wetland mitigation measures, an applicant shall obtain a permit from the United States Army Corps of Engineers.

(3) Permits from the state may also be required.

G. Wetland buffers (1) Purpose: provide standards for the establishment of a buffer around all wetlands in major subdivisions as the wetlands boundaries are expected to change over time; to provide standards for protecting wetlands in major subdivisions; to encourage natural drainage; and to encourage best management practices and design standards.

(2) Wetland buffer zones (a) A 50-ft. wetlands buffer shall be established landward from the boundaries of all wetlands. This buffer shall consists of two zones as defined below

(i) Wetland buffer zone

- Zone A. – 20 ft. wide on the upland side of the wetland buffer
- Zone B. – 30 ft. wide beyond zone A.

(ii) Permitted Activities	Activity	Zone A	Zone B
State and federal permitted disturbances such as road crossing and fill with permits		Permitted	Permitted
Other road crossings, such as bridges with permits		Permitted	Permitted
Stormwater management outfalls permitted by SCD		Permitted	Permitted
Invasive species control		Required	Required

Commented [MT4]: At the end of G.(1)(i), Zone B., add "except as provided in paragraph G(4).

Commented [MT5]: See my comment below about invasive species. As written in this paragraph this likely will be interpreted as controlling non-native invasive species, and that is logical and appropriate. If the term "invasive species" in G.(5) is interpreted to include native invasive species this table might be seen as requiring control of certain native species.

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Planting of native vegetation	Permitted	Permitted
Floodplain creation without impacting associated wetlands with permits	Permitted	Permitted
Wetland creation or enhancement for mitigation with permit	Permitted	Permitted
Tax ditch maintenance	Permitted	Permitted
Stormwater management BMP's	Not permitted	Permitted
Recreational trails constructed of permeable materials	Not permitted	Permitted
Selective clearing for maintenance	Not permitted	Permitted
Erosion or stabilization measures	Not permitted	Permitted
Boat ramps with permits	Permitted	Permitted
ADA compliant boardwalks	Not permitted	Permitted
Docks with permits	Permitted	Permitted

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(iii) Additional regulations • No buffers are required for wetlands to be filled with a valid USACE and/or DNREC permit.

(3) Authorized Impacts

(a) Development activities shall not be authorized in Waters of the US, Waters of the State, delineated wetlands, or wetland buffers without approval from the United States Army Corp of Engineers and/or DNREC. Such allowable activities permitted may include bridge crossings, utility crossings, boat ramps, docks, or stormwater outfalls, only with proper approval and permitting.

(b) Major subdivision activities such as permanent or temporary structures shall not be authorized in wetlands or wetland buffers except when the following criteria are met: (i) The applicant has taken every reasonable step to avoid adverse impact to the wetland and buffer; and (ii) The applicant has provided appropriate mitigation for adverse impacts to the wetland and buffer; and (iii) The wetlands and buffers shall be part of the open space, owned and maintained by the homeowners association, and shall not be on individual buildable parcels of land. All sub dividable lots will be outside the wetland buffer.

(4) Wetlands Buffer-Width Averaging: (a) Wetlands buffer width averaging can be utilized to allow flexibility in site design and buffer width due to non-conformities in

Commented [MT6]: This paragraph G.(b)(iii) belongs in paragraph G. (2), because it relates to where the buffers are, it does not directly relate to the activities in the buffer.

Commented [MT7]: Add before(a) "The width in paragraph G(2)(a)(i) for Zone B may be changed as follows:

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shorelines/wetlands lines. (b) Wetlands buffer width averaging will require the overall total area to be provided, and no area reduction will be allowed implementing averaging.

(c) Buffer width averaging may be utilized to adjust the width of the buffer along the length, allowing a reduction of the width for short runs while meeting the overall area of buffer to be provided as to not reduce the wetlands function or values

(d) The overall square footage of Zone B Wetland Buffer must be achieved within the boundaries of the property to be developed

(e) Wetland buffer with averaging is not available for Zone A.

(f) Wetland buffer width averaging may be used on all of the Zone B wetland buffers

(g) Zone B Wetland buffer averaging shall not be expanded more than double the width of Zone B wetland Buffer as reference in attached table.

(5) Buffer Maintenance and Management:

(a). Maintenance Standards

(i) All buffers that are composed of native species should be preserved to the maximum extent practicable with no disturbance of native species allowed in Zone A and only selective clearing of native species allowed in Zone B.

(ii) All buffers that are composed of native species shall be maintained with no mowing allowed in Zone A. Planting of native woody species is encouraged in these buffers. Grass in Zone B shall be mowed a maximum of four times per year.

(iii) All buffers that are composed of nonnative species should be maintained to minimize nonnative species and to encourage colonization from native species. Planting of native woody species is encouraged in these buffers. Planting of nonnative and invasive-species is prohibited.

(b) Buffer Management Plan. All major subdivisions that contain buffers shall be required to submit a buffer management plan and inventory, prepared by a qualified professional that describes measures for maintaining or improving buffer on the site. The community's homeowners' association shall be responsible for maintaining the buffer.

(i) The Buffer Management Plan shall include that all maintenance of the buffer shall comply with City of Lewes codes regarding invasive species.

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This sentence should be changed, for instance, to remove "and invasive"

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July 31, 2020

Dear Lewes Planning Commission Members,

We are concerned about the proposed buffer sizes in the draft Wetlands Buffer Ordinance for the city of Lewes. They are smaller in size than those in New Castle and Kent Counties and even the proposed buffers in Sussex County. The buffer sizes in the proposed Ordinance are inadequate given what is known about continuous environmental changes in Lewes.

We recommend:

- Increasing the total wetland buffer to 100 feet minimum (page 3 - section G 2 a)
- Increasing Zone A and B buffers to 50' each (page 3 - section G 2 a i)
- **Eliminating** section G 2 a iii page 4 - *No buffers are required for wetlands to be filled with a valid USACE and/or DNREC permit*
- Changing section G 5 a iii so that planting of native woody species is **required** vs. encouraged *“All buffers that are composed of nonnative species should be maintained to minimize nonnative species and to encourage colonization from native species. Planting of native woody species is **encouraged** in these buffers. Planting of nonnative and invasive species is prohibited.”*
- First sentence of G 5 a iii (above) is confusing. Suggested rewording – *Maintenance of buffers composed of nonnative species should minimize nonnative species in order to encourage colonization from native species.*
- For clarification please include an appendix which shows a visual representation of the regulations.

Other concerns:

- In section G 2 a ii, it is possible for *Stormwater management BMP's* to be permitted in Zone B (page 4). This reminds us of the Fishers Cove developers asking the Lewes Planning Commission to trust them in figuring out the storm water management system. Under the proposed regulation when their system fails, they could hypothetically put a holding pond in a Zone B buffer to control the water. Is it possible to include language that would limit when BMPs are acceptable in Zone B?

- Section G 3 b iii is confusing
 - (G 3 b) *Major subdivision activities such as permanent or temporary structures shall not be authorized in wetlands or wetland buffers except when the following criteria are met:*
 - (G 3 b iii) *The wetlands and buffers shall be part of the open space, owned and maintained by the homeowner's association, and shall not be on individual buildable parcels of land. All sub dividable lots will be outside the wetland buffer.*
 - It could be interpreted that permanent or temporary structures on wetlands/in buffers are permitted if the HOA was responsible

We support the Center for Inland Bays research and recommendations regarding wetland buffers. Specifically, better buffers will help: (1) improve poor water quality in Sussex County, (2) prevent flooding, (3) prevent hazards associated with climate change, (4) improve economic value and (5) manage growth. Wider buffers are better and forested buffers are essential. For the complete Center for Inland Bays Sussex County Buffer Ordinance Fact Sheet please see this link:

<https://www.inlandbays.org/wp-content/uploads/Buffer-Fact-Sheets-and-Supporting-Information-032620.pdf> . Of particular note is their comparison chart on page 6.

Regards,

Representing Concerned Citizens of Rodney, Hoornkill and Friends

Andrew Campanelli

Eunice Henderson

Barbee Kiker

Janice Pinto

Rick Spitzborg