

§ 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, that 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

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 shall 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 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

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 consist 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 except as provided in G(4).

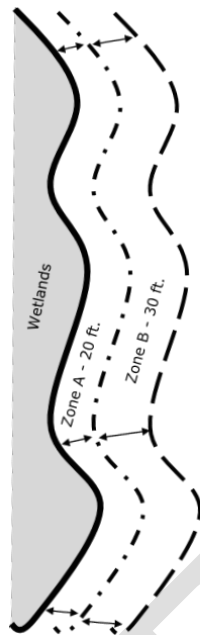


Figure 1- Wetlands Buffer Zones Ex. NTS

(ii) Permitted Activities

<u>Activity</u>	<u>Zone A</u>	<u>Zone B</u>
<u>State and federal permitted disturbances such as road crossing and fill with permits</u>	<u>Permitted</u>	<u>Permitted</u>
<u>Other road crossings, such as bridges with permits</u>	<u>Permitted</u>	<u>Permitted</u>
<u>Stormwater management outfalls permitted by Sussex Conservation District (SCD)</u>	<u>Permitted</u>	<u>Permitted</u>
<u>Invasive species control</u>	<u>Required</u>	<u>Required</u>
<u>Planting of native vegetation</u>	<u>Permitted</u>	<u>Permitted</u>
<u>Floodplain creation without impacting associated wetlands with permits</u>	<u>Permitted</u>	<u>Permitted</u>
<u>Tax ditch maintenance</u>	<u>Permitted</u>	<u>Permitted</u>
<u>Stormwater management BMP's</u>	<u>Not permitted</u>	<u>Permitted</u>
<u>Recreational trails constructed of permeable materials</u>	<u>Not permitted</u>	<u>Permitted</u>
<u>Selective cutting for maintenance</u>	<u>Not permitted</u>	<u>Permitted</u>
<u>Erosion or stabilization measures</u>	<u>Not permitted</u>	<u>Permitted</u>
<u>Boat ramps with permits</u>	<u>Permitted</u>	<u>Permitted</u>
<u>Boardwalks</u>	<u>Not permitted</u>	<u>Permitted</u>
<u>Docks with permits</u>	<u>Permitted</u>	<u>Permitted</u>

(iii) Additional regulations

No buffers are required for wetlands to be filled with a valid USACE and/or DNREC permit.

(iv) 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.

(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.

(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 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 cutting 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 noninvasive 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 of trees and plants, prepared by a qualified professional that describes measures for maintaining and if applicable, 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 and/or policies regarding invasive species.