Frequently Asked Questions

Shoreland Water Quality Protection Act

What is the Shoreland Water Quality Protection Act (SWQPA)?

The SWQPA (RSA 483-B), originally named the Comprehensive Shoreland Protection Act (CSPA) was enacted by the 1991 session of the Legislature. The act established minimum standards for the subdivision, use and development of the shorelands along the state's larger waterbodies. In April and July of 2008, the act was amended and several changes took effect including limitations on impervious surfaces, revised vegetation maintenance requirements and the establishment of a permit requirement for many, but not all, construction, excavation and filling activities within the protected shoreland. During the 2011 legislative session, the CSPA was renamed the Shoreland Water Quality Protection Act and changes were made to the vegetation requirements within the natural woodland and waterfront buffers, the impervious surface limitations and a new shoreland permit by notification process was established.

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Where is the protected shoreland located?

The protected shoreland are those lands that are located within 250 feet (measured using a horizontal surveyors line) from the reference line of protected waterbodies.

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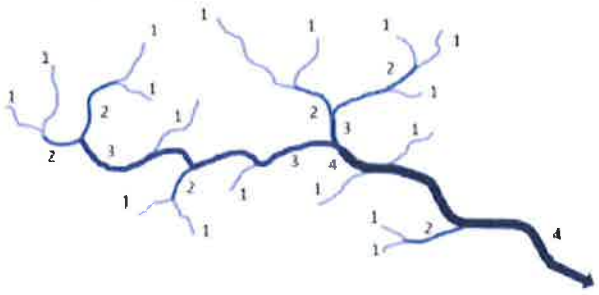
What is Stream Order and how is it determined?

Stream order is a classification system for all streams and rivers. The smallest streams or tributaries, typically found in the upper reaches of the watershed, which have no other streams feeding them, are considered 1st Order streams. When two first order streams merge, the resulting larger stream becomes a 2nd Order stream. Continuing the ordering system, when two 2nd Order streams merge, a larger, 3rd Order stream is formed. In New Hampshire, all 4th Order and greater streams and rivers are protected under the Shoreland Water Quality Protection Act (SWQPA). The SWQPA also applies to smaller rivers – 1st, 2nd and 3rd order – that are designated under the NH Rivers Management and Protection Program.



Which bodies of water are protected under the SWQPA?

All lakes, ponds and impoundments greater than 10 acres, all 4th order and greater streams and rivers, all designated rivers and river segments under RSA 483 (The Rivers Management & Protection Act) and all waters subject to the ebb and flow of the tide (including tidal

marshes, rivers and estuaries). Waterbodies protected under the SWQPA are located on the Consolidated List of Water Bodies subject to the Shoreland Water Quality Protection Act.

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- **Where is the reference line located?**

The reference line is the point from which setbacks are determined and its location varies depending on the type of waterbody.

- Lakes, Ponds and Impoundments greater than 10 acres – The reference line is the surface elevation listed on the Consolidated List of Water Bodies subject to the Shoreland Water Quality Protection Act as maintained by the department.
- Fourth Order and Greater Streams and Rivers - The reference line for streams and rivers under the jurisdiction of the SWQPA is the ordinary high water mark. The ordinary high water mark is defined as the line on the shore, running parallel to the main stem of the river, established by the fluctuations of water. It is 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. Where the ordinary high water mark is not easily discernible, the ordinary high water mark may be determined by NHDES.
- Coastal Waters - The reference line for coastal waters is the highest observable tide line, which means a line defining the furthest landward limit of tidal flow. This does not include storm events, and can be recognized by indicators such as the presence of a strand of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks further flow of the tide.

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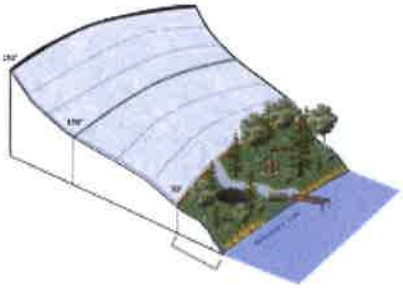
- **Where is the waterfront buffer?**

The waterfront buffer is the area of the protected shoreland located within 50 feet of the reference line of protected water bodies.



- **Where is the natural woodland buffer?**

The natural woodland buffer is the area of the protected shoreland located between 50 and 150 feet from the reference line of all protected water bodies.

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- **What activities require a shoreland permit?**

Within the protected shoreland, new construction or construction that modifies the footprint of existing impervious surfaces, using mechanized equipment to either excavate, remove or form a cavity within the ground and filling any areas with rocks, soil, gravel or sand requires a shoreland impact permit.

Many low impact activities that propose no greater that 1,500 sq ft of total impact area, of which no more than 900 sq ft is new impervious area, may qualify for a shoreland permit by notification.

Impacts that will occur within surface waters or their banks, including replenishing beach sand, or within wetlands, tidal areas or the 100 ft tidal buffer zone and sand dunes are jurisdictional under RSA 482-A and require a wetlands impact permit.

Use this interactive tool to determine if a permit is required.

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- **What activities** DO NOT **require a shoreland permit?**

Many activities within the protected shoreland have been identified as not requiring a shoreland permit because the activity does not constitute construction, excavation or filling. These activities include, but are not limited to:

- Trimming, pruning, and thinning of branches to the extent necessary to protect structures, maintain clearances, and provide views.
- Maintenance of legal, existing, altered areas, such as mowing lawns, raking leaves and pine needles, mulching landscaped areas and haying fields.
- Planting one or more trees within existing altered areas more than 50 feet from the reference line with mechanized equipment.
- Planting of non-invasive vegetation and maintenance of existing gardens.
- Hand-pulling or use of hand tools to remove invasive species or other noxious or harmful plants such as poison ivy, including the root systems, provided that any area exceeding 10 square feet without vegetation be replanted with non-invasive, non-harmful species.
- Placement of stepping stones, provided no root systems are removed to accommodate their placement.
- Placement or installation of readily moved items such as picnic tables, lawn chairs, and swing sets.
- Construction or installation of fences using hand tools.
- Construction of a single accessory structure, such as a shed, greater than 50 feet from the reference line and is less than 150 sq ft in size.
- Maintenance, repair or modification of an existing driveway, including repaving, provided that there is no increase in impervious area.
- Maintenance, repair or modification of an existing primary or accessory structure that does not:
  1. Alter the footprint or impervious area of the structure.
  2. For nonconforming structures erected prior to 1994 that do not meet the 50 foot primary structure setback, extend living space closer to public waters.
  3. Require, or result in, the alteration of previously unaltered areas.
  4. Require, or result in, any excavation or filling within the protected shoreland
  5. Exceed the criteria of the Shoreland Rule (Env-Wq 1405) associated with accessory structures.
- Modifications to an existing structure that minimally changes the outside dimensions of the structure, such as installing a skylight or dormer or putting new siding over old siding, provided the project does not require excavation with mechanized equipment of require additional fill.
- Installing private water facilities such as a well including the trenching associated with connecting the well to a residential dwelling.
- Forest management that is not associated with shoreland development or land conversion that is conducted in compliance with RSA 227-J:9.
- Forestry conducted by or under the direction of a water supplier for the purpose of managing a water supply watershed.
- Agricultural activities and operations defined in RSA 21:34-a and as governed by RSA 430.
- Digging test pits for the purposes of determining suitability for wastewater disposal under RSA 485-A:29 relating to subdivisions or septic systems, provided there is no disruption of groundcover within 50 feet of the shoreline and no test pits within 75 feet of the shoreline.
- Replacing utility poles or guy wires using mechanized equipment, provided that appropriate siltation and erosion controls are used and all temporary impacts are restored.
- Digging test pits for the purposes of determining suitability for wastewater disposal under RSA 485-A:29 relating to subdivisions or septic systems, provided:

1. There is no disruption of groundcover within 50 feet of the reference line.
2. No test pits are dug within 75 feet of the reference line unless required in order to evaluate eligibility for replacement under Env-Wq 1003.10.

- Use of hand tools, such as augers or tile spades, to install monitoring wells, piesometers and flow meters , for:

1. Evaluating site conditions as necessary for the submittal of information required by a permit application under RSA 482-A relating to wetlands, RSA 485-A:29 relating to subdivision of septic systems, or RSA 485-A:17 relating to alteration of terrain.
2. Educational purposes.
3. Monitoring hydrology.

- **What are impervious surfaces?**
  Impervious surfaces are modified surfaces that cannot effectively absorb and infiltrate water. Examples of impervious surfaces include, but are not limited to: roofs, and unless designed to effectively absorb or infiltrate water, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and sidewalks. Exposed ledge on a property is not considered a modified surface and is not considered an impervious surface.

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- **Can I use fertilizer or pesticides within the protected shoreland?**
  No fertilizer, except limestone, can be used within 25 feet of the reference line. Beyond 25 feet, slow or controlled release fertilizer may be used. Always check with local town ordinances as several towns have restrictions that are more stringent than the SWQPA.

  Pesticide use is prohibited within 25 feet of the reference line per Administrative Rules Pes 1001.01 (NH Dept. of Agriculture) and may only be applied by a licensed applicator with a permit from the NH Agricultural Department.

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- **What is slow or controlled release fertilizer?**
  Slow or controlled release fertilizer means fertilizer that is guaranteed, as indicated on the package label, to contain not more than 2 percent phosphorous and a nitrogen component that is at least 50 percent slow release nitrogen.

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- **Can I cut trees within the protected shoreland?**
  Yes, trees and saplings can be removed within the protected shoreland. Trees and saplings removed within 50 feet from the reference line may be removed in accordance with a grid and point system, and trees removed between 50 and 150 feet from the reference line must comply with the woodland buffer requirements. There are no limitations on tree removal beyond 150 feet from the reference line. The Vegetation Management FACT SHEET provides an explanation of these limitations.

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- **Can the stumps be removed?**

  Within 50 feet of the reference line stumps may be ground down flush to the ground without a shoreland permit. Stumps may be removed with a permit if they are replaced with pervious surfaces that meet the 20 foot accessory structure setback or are replaced with new, woody vegetation.

  Between 50 feet and 150 feet from the reference line, stumps may be removed provided that, upon removing the stumps, at least 25% of area between 50 feet and 150 feet from the reference line remains in an unaltered state. Please review the Vegetation Management FACT SHEET for more information on tree removal within the protected shoreland.

  Regardless of location within the protected shoreland, if mechanized equipment is necessary for stump removal, this activity is considered excavation and requires a shoreland impact permit.

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- **What is a non-conforming structure?**
  Nonconforming structure means a structure that, either individually or when viewed in combination with other structures on the property, does not conform to the provisions of the Shoreland Water Quality Protection Act, including but not limited to the impervious surface limits of RSA 483-B:9, V(g).

  The most common form of a non-conforming structure is those residential dwellings that do not meet the 50 foot primary structure setback. Attached decks are considered part of the primary structure.

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- **What is a primary structure?**
  "Primary structure" means anything constructed or erected for the support, shelter or enclosure of persons, animals, goods, or property of any kind, with a fixed permanent location on or in the ground and is central to the fundamental use of the property and is not accessory to the use of another structure on the same premises. Primary structures are typically the residential dwelling and include all attached decks.

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- **What is an accessory structure and what are the accessory structure limitations?**
  Accessory Structures are defined in the law (RSA 483-B) as structures that are incidental and subordinate to the primary structure or use of a property. In most cases, the residential dwelling is the primary structure. Decks are not accessory structures - they are considered an extension of the primary structure. Accessory structures include paths, driveways, patios, improved surfaces, pools, pump houses, gazebos, woodsheds, garages and other outbuildings. Fences and structures that are not maintained in a permanent, fixed location such as tents, picnic tables and lawn furniture are not considered accessory structures.

  The size and location of accessory structures are strictly regulated within the waterfront buffer, which is the area of the property that extends 50 feet landward from the reference line.

  For a comprehensive explanation of the accessory structure limitations, please see the Accessory Structure Fact Sheet.

Accessory Structure Limitations within the Waterfront Buffer:

- Height: 12 feet maximum [1]
- Size: 1.5 square feet per linear foot of shoreland frontage [2]. For example, a property with 100 feet of shoreland frontage is limited to 150 square feet of accessory structure area.
- Setback: At least 20 feet from the reference line.
- May not be built on or into land having greater than a 25% slope.
- May not be converted to living space (e.g. closing in with windows, adding plumbing).
- Must be located in a manner that minimizes impacts to natural groundcover.
- If removing trees or saplings is necessary to locate the accessory structure, tree removal must meet the limitations described within the Vegetation Management Fact Sheet

[1] Certain exceptions apply to shoreline structures authorized by the Wetlands Bureau (RSA 482-A) such as docks and boathouses.
[2] A permanent path up to 6 feet wide is excluded from the accessory structure size limitation. Pervious structures such as those constructed with permeable pavers/pavement are subject to the accessory structure size limits.

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- **What are the septic system setbacks?**
  Septic systems are subject to special setbacks according to soil type. The setbacks for septic systems are:
    - Adjacent to ponds, lakes, estuaries and the open ocean.

  1. Where the receiving soil down gradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than two minutes per inch, the setback shall be at least 125 feet from the reference line.
  2. For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line.
  3. For all other soil conditions the setback is 75 feet from the reference line.

    - Adjacent to rivers and streams – The setback for a septic system must be at least 75 feet.

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- **Do I need a shoreland permit to install or repair a septic system?**
  In accordance with Env-Wq 1406.04(d)(8), if an existing septic system has failed and the septic system can be repaired in accordance with Env-Wq 1002.74, a shoreland impact permit is not required.

  If a new septic construction approval is obtained and there is no proposed increase in sewerage loading from the structure(s) served by the existing system, a shoreland impact permit is not required provided the new system meets the setback requirements of RSA 483-B:9, V (c) and the unaltered state requirement of RSA 483-B:9, V (b) (25% of the area between 50 ft and 150 ft from the reference line must remain in an unaltered state) to the greatest extent feasible.

  Installation of new septic systems on previously undeveloped lots and installation of replacement septic systems that must occur as a result of proposed increases in sewerage loading from the existing structure(s) requires a shoreland impact permit.

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- **How is shoreland frontage determined?**
  Shoreland frontage is calculated by determining the actual shoreland frontage along the waterfront at the reference line.

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- **Can I repair or expand my house if it is a non-conforming structure?**

  Yes, non-conforming structures may be repaired or expanded. In many cases, non-conforming structures can be repaired without a shoreland permit. Maintenance, repair and modifications including vertical expansion of existing, legal, nonconforming primary structures does not require a shoreland permit if the existing impervious area footprint is not modified, there is no expansion of the footprint of interior, year round living space and the project does not require excavation or filling.

  Projects that involve expanding the footprint of interior living space of existing, legal, non-conforming primary structures require a shoreland permit as well as a more nearly conforming request form.

  Always check with local town ordinances as many towns have restrictions that are more stringent than the SWQPA.

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- **What is considered the footprint of an existing non-conforming structure?**
  The footprint of a non-conforming structure is the area of land surface that lies directly beneath the limits of the exterior walls, whether the structure rests directly on the ground or is raised above the ground surface.

  When determining the footprint of a structure for the purpose of calculating impervious area, the footprint is the area outlined by the vertical projection of the impervious surface onto the ground surface where it is or will be located. For instance, the structure's roof overhang is considered when determining the impervious area of a structure.

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- **What are examples of projects that do not require a redevelopment waiver?**
  - A project that does not change the footprint of the existing structure, but expands the structure upward (vertically) such as the expansion or changes to the outside dimensions of a primary structure including replacement of a low pitched roof with a gambrel roof and the addition of dormer windows or gambrel dormers to a roof.
  - The complete replication of all aspects of a primary structure.
  - A project in which there are no changes to the exterior footprint and outside dimensions, but there are changes in the construction materials and/ or interior layout.
  - The replacement of a piling or pad foundation with a standard poured concrete foundation if the new foundation is in the original footprint, located underground, does not create additional living space, and does not disturb or change the existing contours (topography).

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- **What are temporary impact areas?**
  Temporary impacts are areas impacted by regarding, excavation and filling that only temporarily expose the ground and underlying soils to the erosive forces of stormwater. Temporary Impacts often include, but are not limited to: all areas excavated and/ or regraded when preparing a site for new construction, all excavation and regrading that occurs beyond the limits of a new foundation, the impact area associated with installing a new septic system, and installing temporary access ways.

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