

Draft Revisions to the Durham Zoning Map A Project to Revise the Town's Resource Protection Districts Based on Updated Natural Resources Inventories and Public Input

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PROPOSED ZONING MAP REVISIONS 2025

Resource Protection District

A. INTRODUCTION

1. 2023 Zoning Map Revisions

In April of 2023, Durham updated its Zoning Map to implement recommendations of the Town's Comprehensive Plan related to natural resource protection. This policy goal was one of three primary outcomes of the 2018 update of Durham's long range plan for future growth and development, along with preservation of rural character and promotion of agriculture.

The revisions approved at Town Meeting in 2023 removed all areas in the Resource Protection District that were restricted based on outdated flood maps from the 1980s. More recent flood studies and maps produced by the Federal Emergency The 2023 Zoning Map revisions also reflected Comprehensive Plan recommendations to base the boundaries of the Resource Protection District on five additional natural resource criteria:

- 1. 100-Year Floodplains;
- 2. All Areas Subject to Mandatory Shoreland Zoning;
 - 3. 100-foot Stream Buffers;

KEY FINDINGS

- ◆ The Zoning Map was updated in 2023 based on comprehensive plan recommendations and natural resources data provided by the State.
- ◆ During the public participation process and implementation of the new RP boundary, public input indicated significant concern for the accuracy of the State data and for impacts of the new zoning on existing structures.
- ♦ After a review of Durham's data, the Maine Department of Inland Fisheries & Wildlife confirmed that their Co-Occurrence Map was inaccurate and revised it.
- ◆ The 2023 overhaul of the Resource Protection District also did not consider the full impact of placing existing structures into RP and whether environmental data supports such restrictions being placed on those structures.
- ◆ The proposed Zoning Map Revisions will remove areas that were previously placed in RP based on 6+Co-Occurrence of natural resources.
- The proposal will also provide relief for landowners by establishing an RP "development buffer" around existing structures (developed areas).

4. Wetlands of 10 or More Acres;

5. Waterfowl and Wading Bird Habitat; and,

6. Areas designated by Beginning with Habitat as Having a Co-Occurrence of Natural Resources Rating of 6 or Higher.

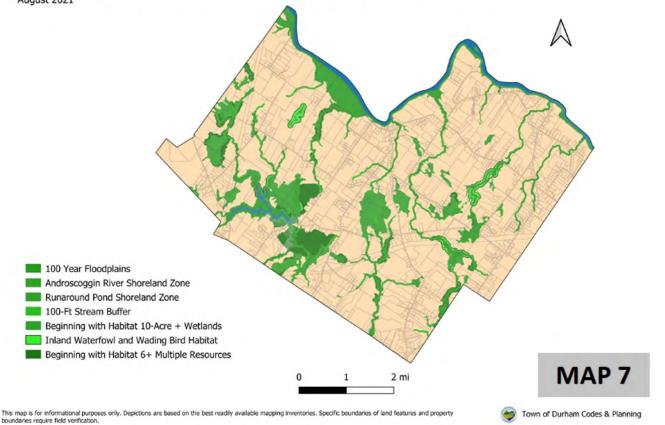
In addition to 100-year floodplains, the next four criteria were all previously reflected in the Land Use Ordinance and Zoning Map based on prior comprehensive plans. The sixth criterion, Co-Occurrence of Natural Resources was added with the 2018 Comprehensive Plan.

The inclusion of Beginning with Habitat's Co-Occurrence ratings as a basis for Resource

Management Agency greatly reduce the boundaries of mapped areas within the 100-year floodplains of Durham's while also expanding the boundary in some areas along the Androscoggin River. Protection added about 1500 acres to the District and generated significant public concern comments about the new restrictions and the accuracy of the data behind the restrictions. This report explores those concerns and provides responses to them.

2. Town Research Leading Up to the 2023 Revisions

Efforts to update the Zoning Map to implement recommendations of the 2018 Comprehensive Plan began in 2019 when the Planning Board hired environmental consultant Michael Morse to review the Land Use Ordinance and DEP regulations to determine what parts of Durham were required to be in Resource Protection per State Law. The consultant identified limited portions of the then existent Resource Protection District along the Androscoggin River and surrounding Runaround Pond. Areas within 250 feet of the river and designated as floodplain or having steep slopes are required to be in Resource Protection per State law. Similar areas around Runaround Pond and larger emergent wetlands are also subject to mandatory Resource Protection. All other portions of Durham placed in Resource Protection are there per the home rule authority of the Town. Based on recommendations of the Comprehensive Plan, the Town Planner prepared a map showing all areas that met the six criteria of the adopted Comprehensive Plan and should be considered for elevated levels of regulatory protections. That map (below) was included in a report presented to the Town's boards and commissions in August of 2021.



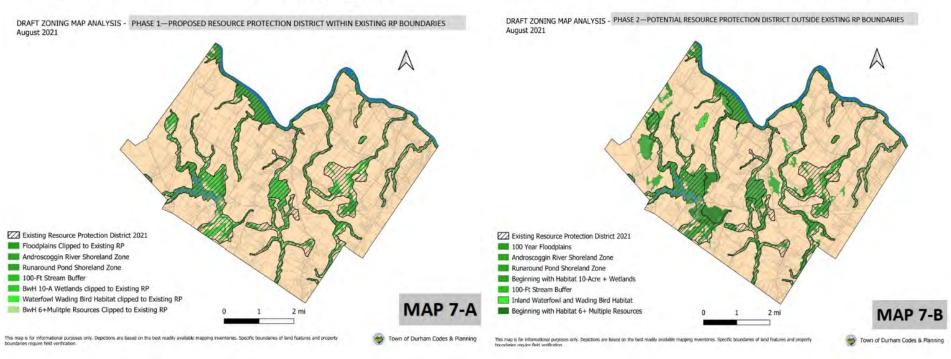
DRAFT ZONING MAP ANALYSIS - POTENTIAL EXTENT OF RESOURCE PROTECTION BASED ON 2018 COMPREHENSIVE PLAN August 2021

3. Past Proposal for a 2-Phased Approach to the Zoning Map Update

Phase 1 - Remove Areas Based on New Floodplain Data

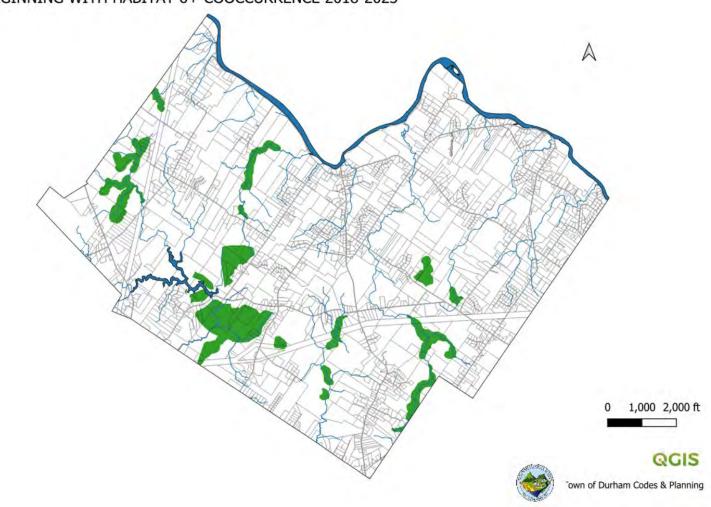
The 2021 report provided to the boards and commissions advocated a two-step process for implementing the Comprehensive Plan recommendations for Zoning Map changes (maps below). The first phase would have removed all areas then included in Resource Protection based on inaccurate data. The second phase would add new areas to the Resource Protection District after thorough review of the data and working with affected landowners to explore the ramifications of the new restrictions and flexible options for implementing them while still following the Comprehensive Plan recommendations. This proposal was put before voters in April of 2022 and was rejected in favor of an update that combined placement of new land into Resource Protection based on the natural resources criteria at the same time as land was removed per more accurate

PROPOSED REALIGNMENT OF THE RESOURCE PROTECTION DISTRICT 2021



Phase 2 – Add Areas Based on Other Natural Resources

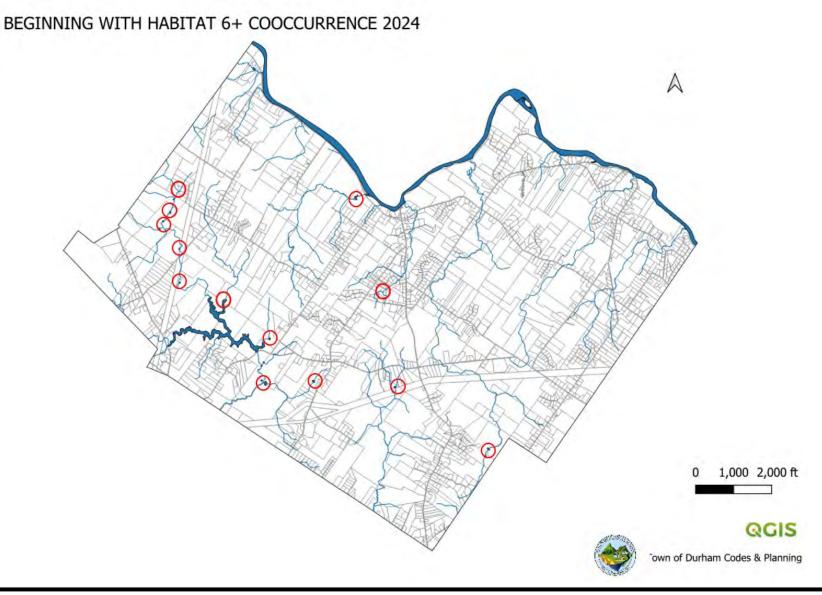
floodplain data. That proposal was subsequently accepted by voters in 2023, resulting in the current boundaries of the Resource Protection District, including areas rated by the Beginning with Habitat program as having a co-occurrence rating of natural resources or 6 or more (map below). An extensive public participation process was conducted prior the Zoning Map amendments, but no research was done to verify the accuracy of the State data, and no consideration was given to alternatives mentioned in the Comprehensive Plan (e.g., mandatory clustering). A careful review of the Beginning with Habitat data did happen after the fact when affected landowners petitioned the Maine Department of Inland Fisheries and Wildlife to review and verify the basis for their ratings of co-occurrence of natural resources in Durham.



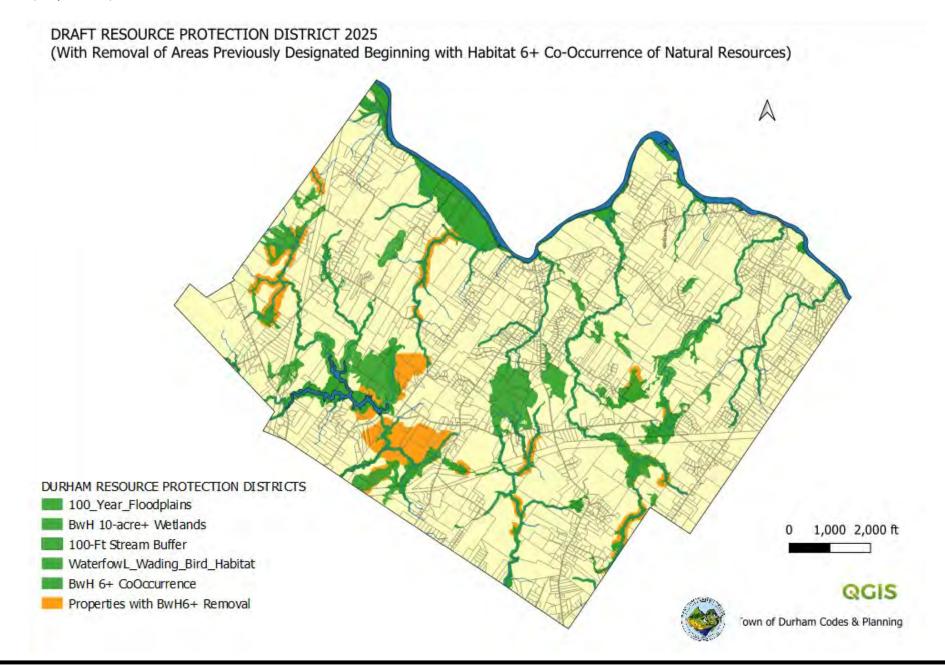
BEGINNING WITH HABITAT 6+ COOCCURRENCE 2018-2023

B. NEW BEGINNING WITH HABITAT DATA

In April of 2024 Beginning with Habitat provided Durham with a customized analysis showing all areas in Town that have at least 6 points of cooccurrence value based on multiple natural resources. That analysis indicates that the only locations in Durham that achieve that threshold are located along streams that are already in Resource Protection per stream buffer requirements (in red circles in map below).



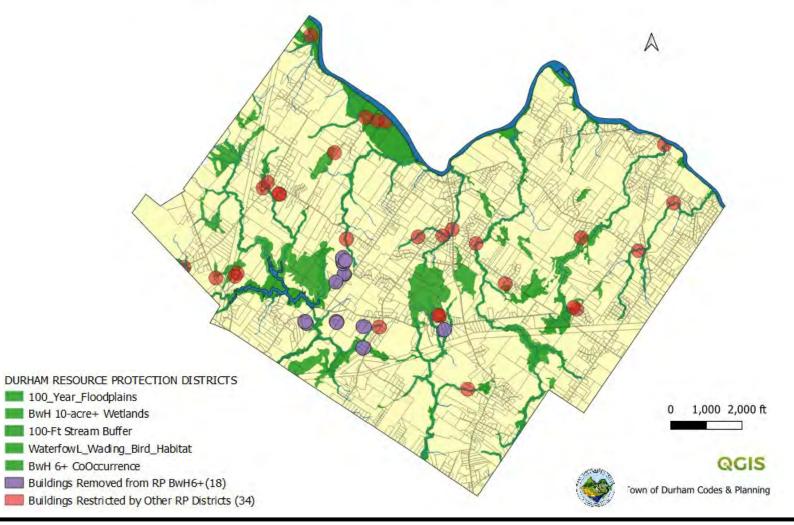
Based on this new Beginning with Habitat data, the boundary of the Resource Protection District should be revised to reflect that new State data (map below).



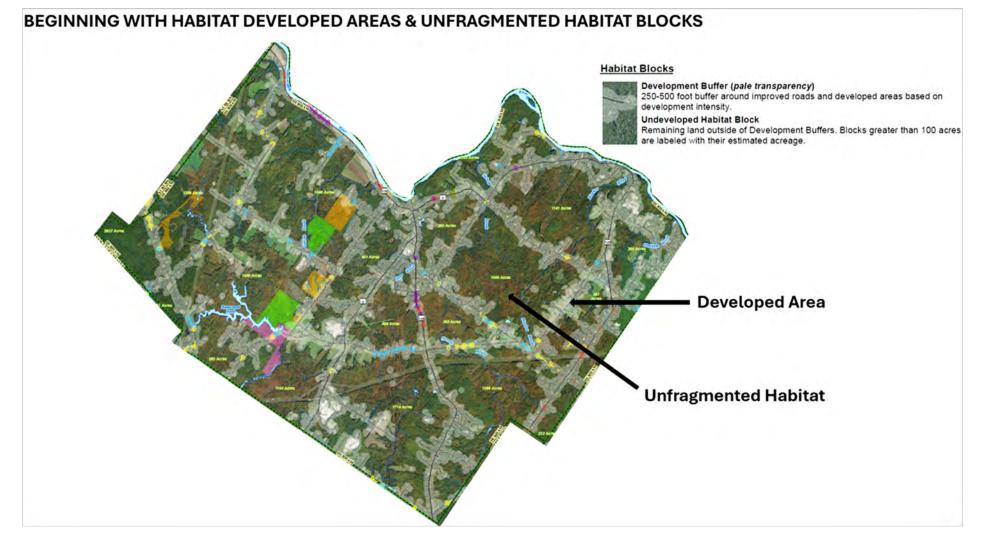
C. BUILDING EXPANSIONS RESTRICTED BY RESOURCE PROTECTION

In addition to the public concerns for the accuracy of some of the State data, multiple property owners objected to the placement of existing home sites in Resource Protection (documented sites on map below). Provisions exist in the Land Use Ordinance for appointed boards to approve expansions of those existing structures that have been rendered non-conforming, but there are costs associated with those processes and the provisions authorizing them may not be in compliance with legal requirements for expansions of non-conforming uses and structures. Removal of the Beginning with Habitat Co-occurrence layer will remove 18 buildings from Resource Protection, but there are 34 buildings on other properties

BUILDINGS RESTRICTED FROM EXPANSION BY RESOURCE PROTECTION DISTRICT



that will remain restricted by other Resource Protection criteria. Additionally, there is no clearly documented public interest in placing Resource Protection restrictions on those home sites. The Beginning with Habitat program acknowledges that previously developed areas have lost their pre -existing habitat values and can be excluded from municipal regulatory restrictions. State biologists recommend focusing on unfragemented habitat blocks and the connections between them (see map below). Therefore, there is no credible scientific basis for placing existing structures into Resource Protection and imposing a regulatory burden on those properties not required of other property owners. The joint working group of Planning Board and Conservation Commission members started with this comprehensive plan data as a starting place for discussions on how to provide needed relief to property owners whose buildings are restricted from expansion by the Resource Protection District.



DRAFT ZONING MAP REVISIONS RP 2025

D. OPTIONS FOR REMOVING EXISTING HOME SITES FROM RESOURCE PROTECTION (Options 1, 2, & 3)

Option 1— All Land within Development Buffers. The adopted Comprehensive Plan indicates that revisions of the Resource Protection District should be based on the Beginning with Habitat data and recommendations. The most comprehensive approach to pulling previously developed areas out Resource Protection would be to follow the criteria used by biologists at Inland Fisheries and Wildlife. That analysis indicated a "development buffer" around existing roads and buildings of between 250 and 500 feet based on development intensity. Option 1 would pull any area designated by Beginning with Habitat as a development buffer out of the Resource Protection District.

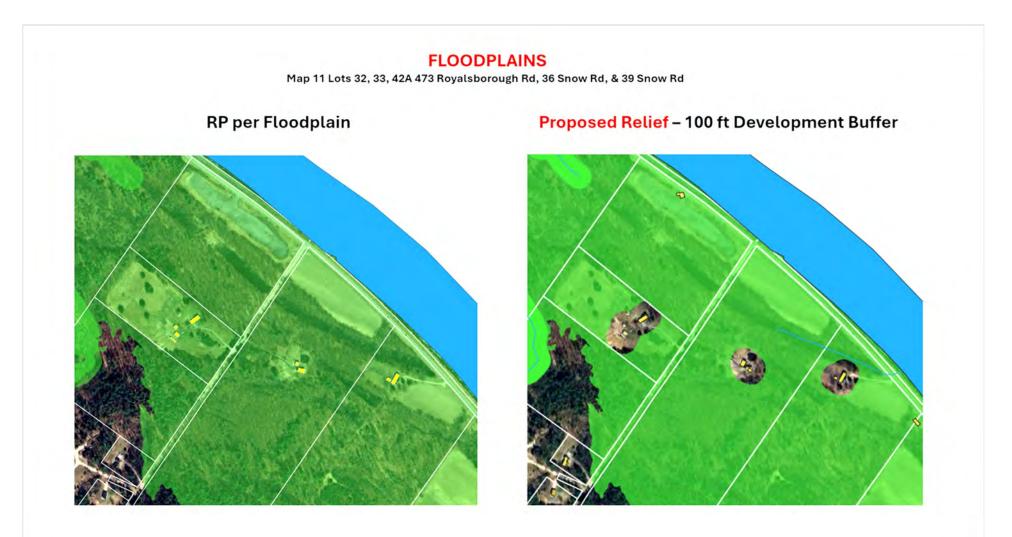
Option 2 — **250 Foot Development Buffer Around Existing Structures.** Option 2 would take a more conservative approach to removing land from the recently revised Resource Protection District, focusing on areas with existing buildings as opposed to removal of all land along road corridors. One reason to retain areas along roads that lack existing buildings in Resource Protection is that those areas typically provide wildlife travel cross- ings of roads and are identified and prioritized by the Beginning with Habitat analysis, providing a partial scientific basis for development restrictions in those locations. Staff at the Beginning with Habitat program have indicated interest in doing more research on the identified road crossing locations, such as documenting actual wildlife usage. In addition to revising the Zoning Map to show the approximate location of the District boundary, text indicating the specified distance from existing structures would provide clear guidance to the Code Officer and property owners for determining the precise location of the Resource Protection District boundary.

Option 3 — **100 Foot Development Buffer Around Existing Structures.** Option 3 would take the most conservative approach to removing land from the recently revised Resource Protection District. This option would focus on addressing the specific concern raised by property owners during the public participation process leading up the 2023 Zoning Map revisions, not being able to expand existing buildings without the need for a Planning Board or Board of Appeals process and the associated costs and time delays for home expansion projects. This option is also the most clear and compelling case for a lack of scientific basis for increased regulatory scrutiny or Resource Protection restrictions.

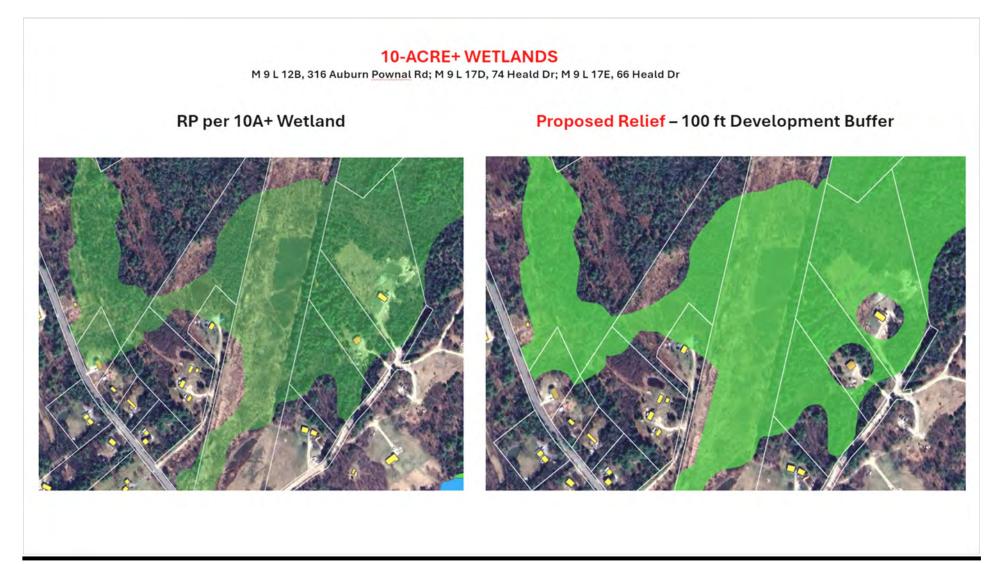
Resource Protection Working Group Recommendation — Implement the third option of placing a 100-foot developed area buffer around all existing structures in the Resource Protection District. This will provide affected property owners with needed relief from building expansion restrictions while having the least impact on the environmental protections recommended in the 2018 Comprehensive Plan and approved by voters in the 2023 Zoning Map revisions. The Working Group further recommended a differential treatment between the various criteria by which land was placed in Resource Protection. For buildings located in floodplains and large forested wetlands, the Working Group recommends allowing the full 100-foot distance from existing buildings subject to Federal and State regulations for floodplain management and wetland alterations. For buildings located in or adjacent to more sensitive buffers for streams and waterfowl/wading bird habitats, allow expansion of buildings as long as the expansions go no closer to the protected resource. Examples of the four different development buffer treatments are presented in the following pages. Detailed analyses of all instances where the Zoning Map will be revised and Land Use Ordinance language for these development buffer guidelines will be prepared for public review prior to any Town Meeting vote on the proposed amendments.

E. WORKING GROUP RECOMMENDATIONS FOR 100-FT DEVELOPMENT BUFFERS OF EXISTING BUILDINGS

1. **FLOODPLAINS DEVELOPMENT BUFFERS:** Although floodplains provide important agricultural and habitat benefits, the primary reason for establishing Resource Protection is to protect public health, safety, and welfare from catastrophic flooding. Maintaining RP designation in such areas while making provision for expansions of existing buildings within a 100-foot radius of those buildings will provide needed relief to property owners without opening large areas for new floodplain development. Such expansions will be subject to local, State, and Federal flood mitigation requirements.



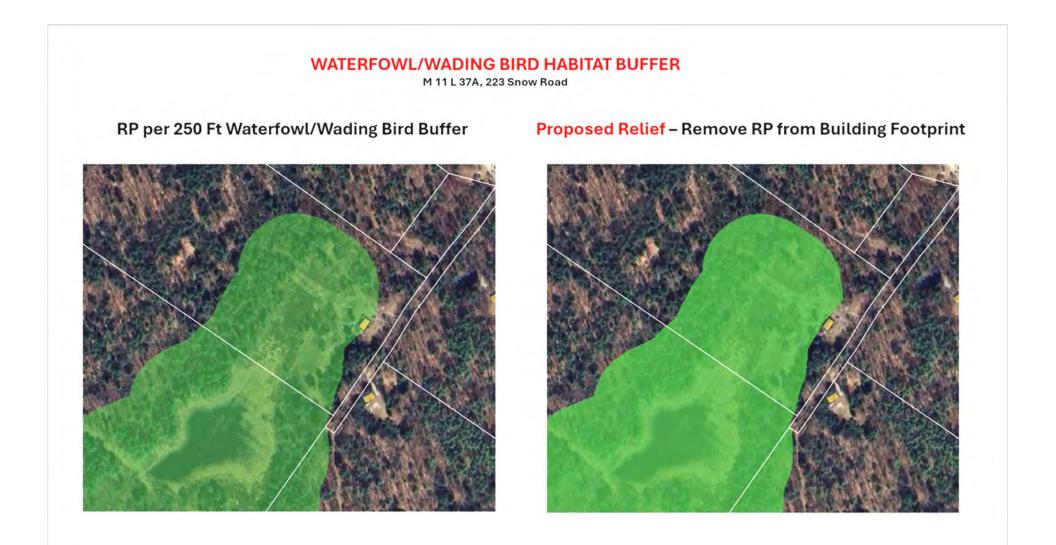
2. LARGE WETLAND DEVELOPMENT BUFFERS: Like floodplains, large forested wetlands serve important environmental and wildlife habitat benefits, but they are also areas that are less suitable for development due to high water table conditions that create drainage problems for road, driveway, and foundation construction. Maintaining RP designation in such areas while making provision for expansions of existing buildings within a 100-foot radius of those buildings will provide needed relief to property owners without opening large areas for new development in large forested wetlands. Such expansions will be subject to State and Federal wetland alteration requirements.



3. **STREAM DEVELOPMENT BUFFERS:** Since adoption of the 2002 Comprehensive Plan, Durham has required maintenance of a 100-foot vegetative buffer along most perennial streams in the community. Stream buffers filter pollutants, reduce water temperature, and provide important wildlife travel corridors. Homes built before the enactment of the stream buffer regulations that are located wholly or partially within the required buffer are legally non-conforming and restricted from expansion per the terms of the Land Use Ordinance. The higher environmental sensitivity of this resource led the Working Group to recommend adjustment of the Resource Protection boundary to remove the nonconforming status of these structures while maintaining as much of the stream buffer as possible. The result is that such buildings will be allowed to expand as long as no further degradation of the stream buffer occurs.

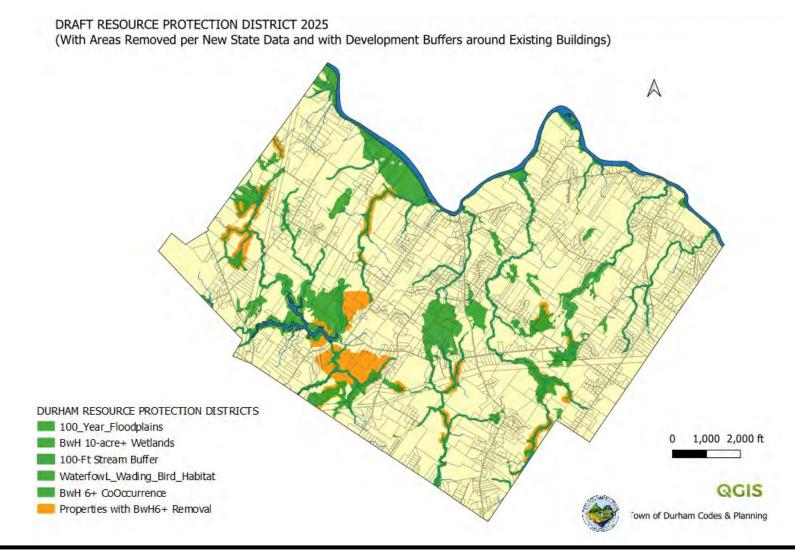


4. WATERFOWL/WADING BIRD HABITAT DEVELOPMENT BUFFERS: The forested areas adjacent to emergent wetlands provide important protection for nesting birds from human incursion. There are five such areas in Durham identified by the Maine Department of Inland Fisheries and Wildlife. The Comprehensive Plan, Land Use Ordinance, and Zoning Map established a 250-foot vegetative buffer around those emergent wetlands. For the few existing nonconforming buildings that intrude into a waterfowl/wading bird vegetative buffer, the Working Group also recommends removing the buildings from Resource Protection to allow expansions that do not cause further degradation of the vegetative buffer.



F. WORKING GROUP RECOMMENDATIONS FOR ZONING MAP & LAND USE ORDINANCE REVISIONS

After considering public input on the accuracy of State natural resources data, the customized co-occurrence analysis provided by Beginning with Habitat, and the research on existing buildings restricted by Resource Protection by the Town Planner, the Working Group recommends that the current Zoning Map be revised to drop all areas designated Resource Protection per the single criterion of Land Use Ordinance Section 2.3.C.2.f. for co-occurrence of natural resources from the Zoning Map (as indicated below). The Working Group further recommends that specific adjustments be made to the RP boundary to remove existing buildings from restrictions against expansion per the guidelines presented in this report and that textual clarification of the differential treatments of development buffers around those buildings be added to the Land Use Ordinance.



Draft Revisions to the Durham Zoning Map Appendix 1

Individual Property Assessments

(Customized Changes to the RP District Boundary)

1. Map 1 Lot 39C, 79 Old Doe Rd

Stream protection Resource Protection buffering exists on this property that restricts the building from expanding without Board approvals. The Resource Protection District boundary will be revised to remove the building, allowing expansions that go no closer to the protected resource. Such expansions will be allowed without review by a regulatory Board.

CURRENT RESOURCE PROTECTION DISTRICT



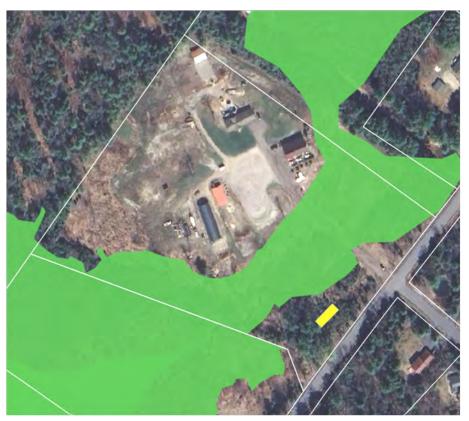


2. M 3 L 7, & 3. 7C-1 208 Meadow Road

Resource Protection was added to these properties based on the presence of floodplain and forested wetland. The property owner filed an appeal that was approved by the Board of Appeals on the grounds that the property owner had taken actions to split the lot and establish a buildable area prior to enactment of the Resource Protection District on the property. The order of the Board decision created a 40,000 square foot building envelope on the front of the property where a home can be built. A 100-foot development buffer will be established around existing buildings of the equestrian center, while areas outside the development buffer and State required vegetative buffers along the water course will be maintained.

CURRENT RESOURCE PROTECTION DISTRICT





4. Map 3 Lot 22M, 50 Evergreen Lane

Waterfowl/Wading Bird Habitat Resource Protection buffering exists on this property that restricts the building from expanding without Board approvals. The Resource Protection District boundary will be revised to remove the building, allowing expansions that go no closer to the protected resource. Such expansions will be allowed without review by a regulatory Board.

CURRENT RESOURCE PROTECTION DISTRICT





5. M 4 L 70, 99 Shiloh Road

Stream protection Resource Protection buffering exists on this property that restricts the building from expanding without Board approvals. The Resource Protection District boundary will be revised to remove the building, allowing expansions that go no closer to the protected resource. Such expansions will be allowed without review by a regulatory Board.

CURRENT RESOURCE PROTECTION DISTRICT





6. M 4 L 98, 44 Soper Road

Stream protection Resource Protection buffering exists on this property that restricts the building from expanding without Board approvals. The Resource Protection District boundary will be revised to remove the building, allowing expansions that go no closer to the protected resource. Such expansions will be allowed without review by a regulatory Board.

CURRENT RESOURCE PROTECTION DISTRICT





7. M 4 L 131, 49 Pinkham Brook Road

Stream protection Resource Protection buffering exists on this property that restricts the building from expanding without Board approvals. The Resource Protection District boundary will be revised to remove the building, allowing expansions that go no closer to the protected resource. Such expansions will be allowed without review by a regulatory Board.

CURRENT RESOURCE PROTECTION DISTRICT





8. M 6 L 112, 936 Royalsborough Road

Stream protection Resource Protection buffering exists on this property that restricts the building from expanding without Board approvals. The Resource Protection District boundary will be revised to remove the building, allowing expansions that go no closer to the protected resource. Such expansions will be allowed without review by a regulatory Board.

CURRENT RESOURCE PROTECTION DISTRICT





9. M 6 L 115, 304 Plummer Mill Road

Stream protection Resource Protection buffering exists on this property that restricts the building from expanding without Board approvals. The Resource Protection District boundary will be revised to remove the building, allowing expansions that go no closer to the protected resource. Such expansions will be allowed without review by a regulatory Board.

CURRENT RESOURCE PROTECTION DISTRICT





10. M 7 L 32F, 30 Timber Oak Drive

Stream protection Resource Protection buffering exists on this property that restricts the building from expanding without Board approvals. The Resource Protection District boundary will be revised to remove the building, allowing expansions that go no closer to the protected resource. Such expansions will be allowed without review by a regulatory Board.

CURRENT RESOURCE PROTECTION DISTRICT



PROPOSED RESOURCE PROTECTION DISTRICT



DRAFT ZONING MAP REVISIONS RP 2025

11. M 7 L 38J, 64 Patriot Way

Stream protection Resource Protection buffering exists on this property that restricts the building from expanding without Board approvals. The Resource Protection District boundary will be revised to remove the building, allowing expansions that go no closer to the protected resource. Such expansions will be allowed without review by a regulatory Board.

CURRENT RESOURCE PROTECTION DISTRICT





12. M 7 L 67, 103 RABBIT ROAD

Forested wetland Resource Protection exists on this property that restricts the buildings from expanding without Board approvals. The Resource Protection District boundary will be revised to create a 100-foot "development buffer" around the buildings, allowing expansions within those previously developed areas. Such expansions will be allowed without review by a regulatory Board but will be subject to State and Federal wetland alteration requirements.

CURRENT RESOURCE PROTECTION DISTRICT





13. M 7 L 89A, Old Brunswick Rd

Forested wetland Resource Protection exists on this property that restricts the buildings from expanding without Board approvals. The Resource Protection District boundary will be revised to create a 100-foot "development buffer" around the buildings, allowing expansions within those previously developed areas. Such expansions will be allowed without review by a regulatory Board but will be subject to State and Federal wetland alteration requirements.

CURRENT RESOURCE PROTECTION DISTRICT





14. M 9 L 9A, 84 New Gloucester Road

Stream protection Resource Protection buffering exists on this property that restricts the building from expanding without Board approvals. The Resource Protection District boundary will be revised to remove the building, allowing expansions that go no closer to the protected resource. Such expansions will be allowed without review by a regulatory Board.

CURRENT RESOURCE PROTECTION DISTRICT





15. M 9 L 12B, 316 Auburn Pownal Rd

Forested wetland Resource Protection exists on this property that restricts the buildings from expanding without Board approvals. The Resource Protection District boundary will be revised to create a 100-foot "development buffer" around the buildings, allowing expansions within those previously developed areas. Such expansions will be allowed without review by a regulatory Board but will be subject to State and Federal wetland alteration requirements.

CURRENT RESOURCE PROTECTION DISTRICT





16. M 9 L 17D, 74 Heald Dr & 17. Map 9 L 17E, 66 Heald Dr

Forested wetland Resource Protection exists on this property that restricts the buildings from expanding without Board approvals. The Resource Protection District boundary will be revised to create a 100-foot "development buffer" around the buildings, allowing expansions within those previously developed areas. Such expansions will be allowed without review by a regulatory Board but will be subject to State and Federal wetland alteration requirements.

CURRENT RESOURCE PROTECTION DISTRICT





18. M 10 L 26B, 15 Kowalski Way

Forested wetland Resource Protection exists on this property that restricts the buildings from expanding without Board approvals. The Resource Protection District boundary will be revised to create a 100-foot "development buffer" around the buildings, allowing expansions within those previously developed areas. Such expansions will be allowed without review by a regulatory Board but will be subject to State and Federal wetland alteration requirements.

CURRENT RESOURCE PROTECTION DISTRICT



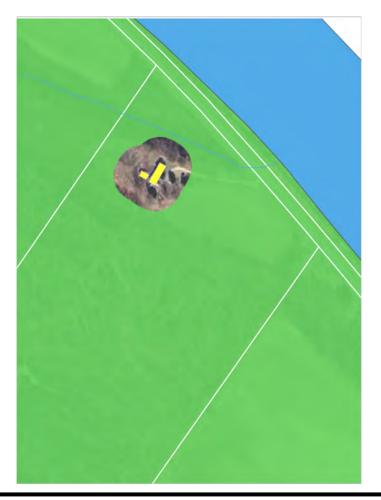


19. M 11 L 32, 473 Royalsborough Rd

Floodplain Resource Protection exists on this property that restricts the buildings from expanding without Board approvals. The Resource Protection District boundary will be revised to create a 100-foot "development buffer" around the buildings, allowing expansions within those previously developed areas. Such expansions will be allowed without review by a regulatory Board but will be subject to State and Federal rules for flood protection measures.

CURRENT RESOURCE PROTECTION DISTRICT





20. M 11 L 33, 36 Snow Rd

Floodplain Resource Protection exists on this property that restricts the buildings from expanding without Board approvals. The Resource Protection District boundary will be revised to create a 100-foot "development buffer" around the buildings, allowing expansions within those previously developed areas. Such expansions will be allowed without review by a regulatory Board but will be subject to State and Federal rules for flood protection measures.

CURRENT RESOURCE PROTECTION DISTRICT

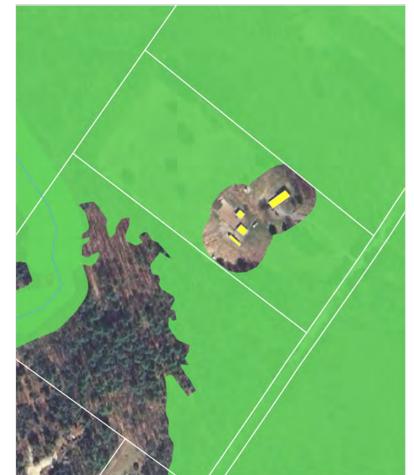


21. M 11 L 42A, 39 Snow Rd

Floodplain Resource Protection exists on this property that restricts the buildings from expanding without Board approvals. The Resource Protection District boundary will be revised to create a 100-foot "development buffer" around the buildings, allowing expansions within those previously developed areas. Such expansions will be allowed without review by a regulatory Board but will be subject to State and Federal rules for flood protection measures.

CURRENT RESOURCE PROTECTION DISTRICT



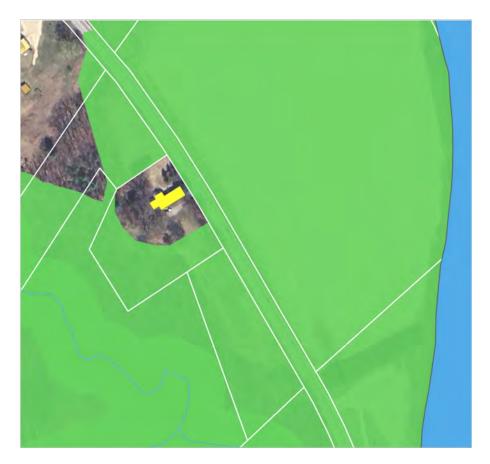


22. M 12 L 36A, 45 Royalsborough Rd

Floodplain Resource Protection exists on this property that restricts the buildings from expanding without Board approvals. The Resource Protection District boundary will be revised to create a 100-foot "development buffer" around the buildings, allowing expansions within those previously developed areas. Such expansions will be allowed without review by a regulatory Board but will be subject to State and Federal rules for flood protection measures.

CURRENT RESOURCE PROTECTION DISTRICT





23. M 12 L 42A, 39 Snow Rd

Waterfowl/Wading Bird Habitat Resource Protection buffering exists on this property that restricts the building from expanding without Board approvals. The Resource Protection District boundary will be revised to remove the building, allowing expansions that go no closer to the protected resource. Such expansions will be allowed without review by a regulatory Board.

CURRENT RESOURCE PROTECTION DISTRICT





24. M 13 L 4B, 4 Granite Farm Hill Rd

Forested wetland Resource Protection exists on this property that restricts the buildings from expanding without Board approvals. The Resource Protection District boundary will be revised to create a 100-foot "development buffer" around the buildings, allowing expansions within those previously developed areas. Such expansions will be allowed without review by a regulatory Board but will be subject to State and Federal wetland alteration requirements.

CURRENT RESOURCE PROTECTION DISTRICT





25. M 13 L 4G, 569 Stackpole Rd

Forested wetland Resource Protection exists on this property that restricts the buildings from expanding without Board approvals. The Resource Protection District boundary will be revised to create a 100-foot "development buffer" around the buildings, allowing expansions within those previously developed areas. Such expansions will be allowed without review by a regulatory Board but will be subject to State and Federal wetland alteration requirements.

CURRENT RESOURCE PROTECTION DISTRICT

