

TOWN OF RINDGE
NEW HAMPSHIRE

WETLANDS CONSERVATION
DISTRICT ORDINANCE

ADOPTED- MARCH 11, 1986
AMENDED- MARCH 12, 1991
AMENDED – MARCH 14, 2000
AMENDED- MARCH 11, 2003
AMENDED-MARCH 14, 2006
AMENDED-SEPTEMBER 9, 2008
AMENDED-MARCH 11, 2014

TOWN OF RINDGE
WETLAND CONSERVATION DISTRICT ORDINANCE

SECTION 1 AUTHORITY AND PURPOSE

Pursuant to the authority granted under RSA 674:16 and RSA 674:21 the Town of Rindge hereby adopts the following ordinance. The purpose of enacting this ordinance is done in the interest of the public health, convenience, safety and welfare. The Wetlands Conservation District Ordinance is intended to protect the quality of water and wetlands in the Town of Rindge:

- A. By regulating the development of buildings and land use within the Wetlands Conservation District that would contribute to the pollution of surface and ground water by sewage or other contaminants.
- B. By preventing the destruction of wetlands, because they provide flood protection, flood control, water quality protection, natural habitat and food supply for wildlife and fisheries, storm water detention, groundwater recharge, pollution attenuation, carbon sequestering, sediment trapping, chemical and organic waste removal, watershed stability, education and recreation.
- C. By preventing damage to structures and properties caused by inappropriate development in the Wetland Conservation District.

SECTION 2 DESCRIPTION OF DISTRICT

The Wetlands Conservation District is hereby determined to be all surface waters and wetlands as determined by the following criteria. The boundary of the wetland shall be determined by the criteria established in and defined by the Corps of Engineers Wetlands Delineation Manual, Technical Report Y -87 -1, Environmental Laboratory, Department of the Army, 1987 and most current regional supplements and the most current version of "*Field Indicators for Identifying Hydric Soils in New England*", New England Interstate Water Pollution Control Commission. In addition, the Wetlands Conservation District includes a zone of minimal disturbance of 150 feet around all surface waters and 50 feet around all Vegetated Wetlands greater than 3,000 square feet in area. In all cases where the Wetlands Conservation District is superimposed over another zoning district in the Town of Rindge, that district whose regulations are the most restrictive shall apply. This definition is not intended to prevent any Board from considering other reliable information regarding the location, boundary or other information pertinent to wetlands.

SECTION 3 EXEMPTIONS

For the purpose of this Ordinance, the following shall not be considered wetlands:

- A. Manmade ditches and swales.
- B. Sedimentation or detention basins and ponds not intentionally created or used as a wetland.
- C. Manmade agricultural and irrigation ponds, fire ponds and cisterns.
- D. Silage pits.
- E. Septage or manure lagoons
- F. Isolated wetlands or surface waters that are 3,000 square feet or less that do not meet the definitions of a Vernal Pool.

SECTION 4 PERMITTED USES:

Any of the following in the Wetlands Conservation District unrelated to or not precedent to the erection of any building or structure, except as necessary for water supply, and that are otherwise permitted by the zoning ordinance are allowed.

- A. Forestry, which is performed in accordance with Best Management Practices.
- B. Agriculture, which is performed in accordance with Best Management Practices, such as general farming, pasture, crop harvesting and haying.
- C. Wells and well supplies.
- D. Wildlife refuges.
- E. Conservation areas and nature trails.
- F. Open space as permitted by subdivision regulations and as otherwise permitted by this ordinance.
- G. Streets, roads, access ways and utilities, if essential to a permitted use of the land not within the Wetlands Conservation District, if so located and constructed as to minimize any detrimental impact of such uses upon the wetlands and if approved by the State Wetlands Bureau after review by the Rindge Conservation Commission. This includes driveways to single-family houses, and roads that are used exclusively to gain access to a property or facility. Such streets, roads, access ways, and driveways shall either be (1) pervious, or (2) if impervious, shall be constructed in such a way as to collect all surface water runoff and divert it to an area or areas at least 50 feet distant from any Vegetated Wetland or 50 feet from any Surface Waters, using Best Management Practices. In the event dredging, filling, draining or otherwise altering the surface configuration of Surface Waters or Vegetated Wetlands, is required, a Special Exception must be obtained In accordance with Section 6 of this Ordinance.

- H. Septic systems repaired or replaced "in-kind" provided that they meet all the requirements of Env-wq 1000 and other applicable state laws and regulations. The setback requirements and other provisions of Env-wq 1000 for Surface Waters shall also apply to Vegetated Wetlands.

SECTION 5 PROHIBITED USES

The following uses are prohibited in the Wetlands Conservation District unless an applicant proves, to the Zoning Board of Adjustment, that the use does not conflict with the purposes identified in Section 2 and the appropriate variances are obtained:

- A. No building or Impervious Surface shall be established or expanded in or within 50 feet of the Ordinary High Water Mark of Surface Waters or within 50 feet of Vegetated Wetlands except for the allowance of Impervious Surfaces in Section 4 G of this Ordinance.
- B. No septic tank or septic system effluent disposal area, designed to service a new building or the expansion of an existing building shall be placed at horizontal distances less than 100 feet from the Ordinary High Water Mark of Surface Waters or 100 feet from Vegetated Wetlands. No septic system piping shall be placed at a horizontal distance less than 50 feet from the Ordinary High Water Mark of Surface Waters or less than 50 feet from Vegetated Wetlands.
- C. The placement of all septic tanks, sewer lines and leaching portions of septic systems for designed replacement systems shall comply with the requirements of this Section 5B to the maximum extent feasible as determined by a licensed designer and shall comply with all applicable State requirements.
- D. No net increase in peak flow of storm water runoff into Surface Waters or Vegetated Wetlands as a result of any development shall be allowed: Calculations to be based on a 25 year storm event.
- E. No establishment or expansion of salt storage yards, automobile junk yards or solid or hazardous waste facilities shall take place in or within 250 feet of Surface Waters or within 250 feet of Vegetated Wetlands.
- F. No underground or above ground storage of Hazardous Materials shall take place in or within 125 feet of the Ordinary High Water Mark of Surface Waters or within 125 feet of Vegetated Wetlands.
- G. No dumping, disposal or storage of snow and ice collected from off-site roadways or parking areas outside the Wetlands Conservation District shall take place in or within 250 feet of the Ordinary High Water Mark of Surface Waters or within 250 feet of Vegetated Wetlands.
- H. No fertilizer, except limestone, shall be used within 25 feet of the Ordinary High Water Mark of Surface Waters or within 25 feet of Vegetated Wetlands.

Low phosphate, slow release nitrogen fertilizer or limestone, may be used in the buffer zone between 25 and 250 feet from these Resource Areas.

SECTION 6 USES PERMITTED BY SPECIAL EXCEPTIONS

The Town realizes that, in certain cases, access to property is impossible or impractical without crossing a wetland or Surface Waters. In those cases, the Town is willing to allow the dredging and filling of a limited area solely for the purpose of such access as set forth In Section 4.G of this Ordinance. This Section 6 shall not be construed as to allow the dredging and filling of wetlands or Surface Waters for the purpose of constructing buildings, other structures, or parking areas or for any purpose other than access, unless a variance is granted by the Zoning Board of Adjustment.

To this end, therefore, dredging, filling, draining or otherwise altering the surface configuration of Surface Waters, or Vegetated Wetlands shall be permitted only for access as described in Section 4.G and only if a Special Exception is granted by the Board of Adjustment. This Special Exception shall run with the land in question. The Board of Adjustment may grant a Special Exception under this section if the proposed use does not conflict with the purposes and intention of Section 2 of this Ordinance; the Special Exception criteria listed in Article XIV of the Rindge Zoning Ordinance are satisfied; and the applicant will obtain all other applicable permits.

SECTION 7 RESTRICTED USES

The purpose of this Section is to preserve the natural landscape and prevent soil erosion into and pollution of Vegetated Wetlands and Surface Waters; wind shear on adjacent properties; and thermal gain of Surface Waters which accelerates plant and algae growth.

Where existing, a Natural Woodland and vegetated buffer shall be maintained within 150 feet of the Ordinary High Water Mark of Surface Waters and within 50 feet of Vegetated Wetlands with the following exceptions:

- A. Tree cutting is limited to 50 percent of the basal area of trees and 50 percent of the total number of saplings or shrubs in a 20-year period. A healthy well distributed stand of trees, saplings, shrubs, and ground covers must be maintained. Stumps and their root systems must remain intact in the ground within 50 feet of the Ordinary High Water Mark of Surface Waters and within 50 feet of Vegetated Wetlands.
- B. Trees, saplings, shrubs and ground covers which are removed to clear an opening for buildings, septic systems, roadways, pathways and parking lots shall be excluded when computing the percentage limitations in the preceding subsection.
- C. Dead, diseased, unsafe or fallen trees may be removed and shall be excluded when computing the percentage limitations in the first subsection.
- D. Dead and living trees that provide habitat for wildlife are encouraged to be preserved.

SECTION 8 APPLICATION REVIEW PROVISIONS

- A. Where there is reasonable evidence to suspect the presence of wetlands or Resource Areas not otherwise or improperly delineated on a particular site, the Board of Selectmen, or Planning Board may require a third party review, determination and report by a Wetlands scientist certified by the State of New Hampshire prior to granting approval for building permits, sub-division site plans or any activity restricted by this Ordinance. The third party reviewer shall be selected by the Board of Selectmen or the Planning Board. Should the third party review identify resource areas not otherwise or improperly delineated as such, the Board of Selectmen or the Planning Board shall include these areas in the Wetlands Conservation District. Any services performed by the third party reviewer shall be paid for by the permit applicant.
- B. Any prior existing nonconforming use of land or buildings within the Wetlands Conservation District shall be deemed a nonconforming use and when such use is abandoned for one year, such land and/or buildings become subject to the Wetlands Conservation District Ordinance.
- C. The Rindge Conservation Commission shall receive written notice from the Zoning Board of Adjustment of any application within the Wetlands Conservation District for a Special Exception or Variance and shall render an advisory opinion to the Zoning Board of Adjustment on such applications.

SECTION 9 ENFORCEMENT

- A. The Board of Selectmen is hereby authorized and empowered to adopt such rules or organization and procedures as are necessary for the efficient administration of this Ordinance.
- B. Upon any well founded information that this Ordinance is being violated, the Selectmen shall, on their own initiative, take steps to enforce the provisions of this Ordinance by seeking an injunction from Superior Court, or by taking any other appropriate legal action.
- C. Any person who is aggrieved of an administrative decision made under the provisions of this ordinance may appeal to the Zoning Board of Adjustment, under the provisions of RSA 674:33.

SECTION 10 VIOLATIONS

- A. Reports of violations of this Ordinance should be made in writing to the Board of Selectmen. Upon receipt of a notice of violation, the Selectmen, or their designee, shall conduct an inspection to determine if the violation exists and, if it exists, the seriousness of the violation.
- B. If the Selectmen, or their designee, conclude after an investigation that this ordinance has been violated, then they may issue an order imposing a penalty for the violation.

C. Such order may consist of:

1. An administrative fine not to exceed the amount authorized by New Hampshire Revised Statutes Annotated, Chapter 676: Section 17, (as subsequently amended), for each violation of this Ordinance. Each day of a continuing violation shall be considered a separate violation of this Ordinance; and/or
2. An order requiring restoration, replanting, and/or removal of impervious surface encroachment, in the area where the violation occurred. If the Selectmen order restoration, then the person or entity in violation shall be responsible to submit a restoration plan for approval by the Selectmen. It should include a description of the species, number of re-plantings, and basal area proposed to be replanted. Replacement plantings shall consist of species that are as close as possible to the species present prior to vegetation removal. Replacement plantings shall have spatial and compositional diversity that replicates a natural woodland buffer. Replacement and remaining trees shall comprise at least 50% of the basal area that existed prior to the cutting which violated the Ordinance, unless an alternative plan is approved by the Selectmen.
3. The Conservation Commission shall review restoration plans and shall make recommendations to the Selectmen.

D. Any order imposing an administrative fine and/or restoration shall give the person or entity believed to be in violation of this Ordinance a period of at least 10 days but not more than 30 days to respond to the order. After considering any such response, the Selectmen may amend or modify their order.

SECTION 11 SEVERABILITY

If any section, provision, portion, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional by any court, such holding shall not affect, impair or invalidate any other section, provision, portion, clause or phrase of this Ordinance.

SECTION 12 DEFINITIONS

Unless otherwise defined in town ordinances, the following definitions apply:

- A. Basal Area- The cross sectional area of a tree measured at a height of 4.5 feet above the ground, usually expressed in square feet per acre for a stand of trees.
- B. Best Management Practice- When referring to forestry, Best Management Practices are defined in "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire," prepared by the New Hampshire Department of Resources and Economic Development, (reprinted 1998), as it may be amended. Best Management Practices for agriculture are defined in "Manual of Best Management Practices for Agriculture in New Hampshire," prepared by the Agricultural Best

Management Practices Task Force and the USDA Natural Resources Conservation Service for the New Hampshire Department of Agriculture, (revised August, 1998) as it may be amended. Best Management Practices for roadway maintenance as defined in "Routine Roadway Maintenance Activities in New Hampshire" NH DOT, March 21, 2003 as it may be amended .. Best Management Practices for storm water management as defined in "Model Storm water Management and Erosion Control Regulation", February, 1997, NH Association of Conservation Districts, Water Quality and Urban Conservation Committee as it may be amended.

- C. Buffer - The undisturbed area around a surface water or Vegetated Wetland.
- D. Ground Cover- Any herbaceous plant which grows to a mature height of 4 feet or less.
- E. Hazardous Material- A product, waste or combination of substances which because of its quantity, concentration, or physical, chemical, toxic, radioactive or infectious characteristics may reasonably pose a significant, actual, or potential hazard to human health, safety, welfare or the environment when improperly treated, stored, transported, used, disposed of, or otherwise managed. Hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious materials, and all substances defined as "toxic" or "hazardous" under EPA list found in 40 CFR Ch. 1 Section 302.4
- F -Impervious Surface--Any constructed or modified surface made of concrete, asphalt, brick, plastic or any other material, base or lining that cannot effectively absorb or infiltrate water. Impervious materials seal surfaces, repel water and prevent precipitation from infiltrating soils and recharging groundwater. Examples of impervious surfaces include, but are not limited to, exposed bedrock, roofs, sidewalks, roads, patios, driveways, parking areas, and walkways covered by impenetrable materials such as asphalt, concrete, brick, stone or soil that has been compacted by vehicular traffic or other means.
- G. - Invasive Species- Invasive plants are introduced species that can thrive in areas beyond their natural range of dispersal. These plants are characteristically adaptable, aggressive, and have a high reproductive capacity. Their vigor combined with a lack of natural enemies often leads to outbreak populations. They include plant species that are non-native to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.
- H.- Natural Woodland Buffer- A forested area consisting of various species of trees, saplings, shrubs and ground covers in any combination thereof.
- I. Ordinary High Water Mark- means the line on the shore, running parallel to the natural water body, established by the fluctuations of water and 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 discernable, the ordinary high water mark may be determined by the Department of Environmental Services. For artificially impounded water bodies refer to the definition of Reference Line to determine

ordinary high water mark.

- J. Pervious Surface: Any walkway, patio, driveway, parking lot or storage areas that are specifically designed to retain the runoff characteristics of the original landscape. Their purpose is to preserve pre-development infiltration and runoff patterns, allowing rainfall to infiltrate through the surface and substrata in order to replenish ground water. Pervious surfaces include, but are not limited to porous asphalt, pervious concrete, permeable pavers, porous flexible paving systems, porous turf, paving blocks, soft porous surfacing and coarse gravel or crushed stone (greater than 1.5 inches diameter) surfaces. Wood decking elevated at least two inches above the ground surface shall be considered pervious, provided that the ground surface beneath the decking is not impervious. Open grid pavers when installed in a sand or gravel base, without a liner are not considered impervious. Any plans that propose Pervious Surface technology must be accompanied by supporting data that proves their effectiveness. All pervious technology must be installed according to the manufactures recommendations or otherwise insure maximum infiltration of precipitation.
- K. Reference Line- For artificially impounded fresh water bodies with established flowage rights, the limit of the flowage rights, and for water bodies without established flowage rights, the waterline at full pond as determined by the elevation of the spillway crest.
- L. Resource Area- surface waters or Vegetated Wetlands .
- M. Sapling- Any woody plant which normally grows to a mature height greater than 20 feet and has a diameter less than 6 inches at a point 4.5 feet above the ground.
- N. Shrub- Any multi-stemmed woody plant which normally grows to a mature height of less than 20 feet.
- O. Surface Waters- Lakes, ponds and perennial streams whose boundaries are defined by their "Ordinary High Water Mark".
- P. Tree- Any woody plant which normally grows to a mature height greater than 20 feet and which has a diameter of 6 inches or more at a point 4 1/2 feet above the ground.
- Q. Vegetated Wetland- Fresh water wetlands as defined by Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, Environmental Laboratory, Department of the Army, 1987 and current regional supplements. These areas may or may not border or contain surface waters.
- R. Vernal Pool- As defined in the New Hampshire Code of Administrative Rules, Env-wt 101.71, 101.82 and 101.99 adopted effective 4/19/08.