

Approved March 2023

## **Article III - Overlay Districts**

### **§190-3.1**

#### **§ 190-3.1 Wetlands Conservation District.** **[Added 1977]**

A. Definition of district. [Amended 1995; March 2012; 3-18-2017]

(1) The Wetlands Conservation District comprises any and all of the following areas within the Town of Rye:

(a) Tidal marshes, tidal lands, ponds, 1st-4th order streams or rivers, vernal pools, freshwater marshes, isolated, non-bordering wetlands, and all other wetlands.

(b) All buffer areas pursuant to 190-3.1(H)

(2) The above descriptions are solely determinative of the boundaries of the areas within the Wetlands Conservation District. As a general guide, the following approximately delineate the location of the areas comprising the district: Town of Rye Hydric Soils, produced by Rockingham Planning Commission, December 20, 1994; Hydric Soils and 2010 Aerial Photo, Rye, New Hampshire, 2010. Additional mapping resources available online are:

(a) NH Coastal Viewer

(<https://nhcoastalviewer.unh.edu/Html5Viewer/index.html?viewer=NHCoastalViewer>)

(b) Town of Rye Axis GIS System: select map search (parcel number, owner or address), select layer (NWI Wetland Map) (<http://www.axisgis.com/RyeNH/Default.aspx?Splash=True>).

(c) National Wetlands Inventory Wetlands Mapper (surface waters and wetlands): select find location, enter street address, city, or place name, or coordinates (decimal degrees in longitude, latitude format): <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>.

B. Delineation of wetlands. [Added March 2012; amended 3-18-2017; 7-13-2021 by Art. 3]

(1) The precise location of wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils and wetlands hydrology in accordance with the techniques outlined in the Regional Supplement to the Corps of Engineers Wetlands Delineation Manual: Northcentral and Northeast Region Technical Report Y-87-1, January 1987. The hydric soils component of delineations shall be determined in accordance with the manual Field Indicators for Identifying Hydric Soils in New England (Version 4, April 2019), published by the New England Interstate Water Pollution Control Commission. [Amended 12-14-2021 (2022-010)]

(2) Vernal pools shall be delineated based on the characteristics listed in the definition of "vernal pools" found in Article XI.

(3) Wetlands and vernal pools shall be identified by a Certified Wetlands Scientist based on field investigation conducted within 5 years of the application being reviewed.

C. Disputes about wetlands boundaries. Disputes about the locations of wetlands boundaries may be appealed in the first instance to the Planning Board, which may retain an independent Certified Wetlands Scientist to report his or her findings on the boundary to the Planning Board. The expenses of such an investigation shall be paid by the party questioning the boundary. Decisions of the planning board may be appealed to the Zoning Board of Adjustment as an administrative appeal pursuant to Article VII of this ordinance. [Amended 1992; 1995; 2012; 3-10-2020 by Art. 3; 7-13-2021 by Art. 3]

D. Purpose. In the interest of public health, convenience, safety and welfare, the regulations of this district are intended to guide the use of areas of land with extended periods of high water tables: [Amended 3-18-2017]

(1) To control the development of structures and land uses on naturally occurring wetlands that would contribute to pollution of surface water and groundwater by sewage, stormwater runoff, and other land uses.

(2) To reduce the impact on wetlands of uses, development and redevelopment by controlling the rate and volume of stormwater runoff and preserving the ability of wetlands to filter pollution, trap sediment, retain and absorb chemicals and nutrients, and produce oxygen by utilizing Best Management Practices – Wetlands Best Management Practice Techniques: For Avoidance and Minimization, as amended. [Amended 3-10-2020 by Art. 3]

(3) To prevent the destruction of natural wetlands and their buffers which provide flood protection, protection of water quality, protection of wildlife habitats, flood storage, recharge the groundwater supply, and provide for the augmentation of stream flow during dry periods.

(4) To minimize the spread of invasive plant species.

(5) To prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities which arise because of unwise use of wetlands.

(6) To encourage those uses that can be appropriately and safely located in wetland areas.

(7) To preserve wetlands for other ecological reasons such as those cited in RSA 482-A.

(8) To preserve and enhance those aesthetic values associated with the wetlands of this Town.

(9) To restrict construction in wetlands to the maximum extent practicable.

(10) To preserve, protect, and enhance potential water supplies and aquifers and aquifer recharge areas.

E. Permitted uses in tidal marshes, tidal lands, ponds, and freshwater marshes. Within the aforementioned areas any use is permitted that does not result in the erection of any structure or sign larger than four square feet, or alter the surface configuration by the addition of fill or dredging, and that is otherwise permitted by this chapter and state and federal laws.

(1) Tidal marshes and ponds. There shall be no cutting of live trees with a diameter of 4 ½ inches or more, measured 4 1/2 feet above ground level, within the one-hundred-foot border zone of the tidal marshes and the ponds identified in § 190-3.1H(1)(a). A woods road to a maximum width of 15 feet may be made and maintained. Removal of dead and dying trees is permitted; however, stumps and root systems shall remain intact in the ground. All shrubs and herbaceous layers shall remain intact. All forestry and non-forestry cutting shall follow Best Management Practices - Forestry. [Amended 1990; 3-18-2017; 3-10-2020 by Art. 3]

(2) Agriculture, such as harvesting marsh hay and gathering cast-up seaweed for fertilizer according to Best Management Practices - Agriculture (Article XI) and Best Management Wetland Practices – Agriculture (2019), provided that such use does not cause increases in surface water or groundwater contamination by pesticides, fertilizers or other toxic and/or hazardous materials substance(s) and that such use will not cause or contribute to soil erosion. [Amended 3-18-2017]

(3) Wildlife refuge.

(4) Passive recreation. [Amended 3-18-2017]

(5) Conservation areas and nature trails.

(6) Piers, wharves, docks, or boat landings may be erected by a property owner on his own land at Rye Harbor, Little Harbor, Sagamore Creek, or in other tidal creeks of this Town with the necessary state and federal approvals. There shall be no piers, wharves, jetties, or other structures erected on the ocean beaches or rocky headlands of Rye that shall project from the extreme high tide mark out from the land to or toward the ocean.

(7) Subject to any state or federal permits that may be required, the following structures are permitted on the tidal wetlands: fences, footbridges, catwalks, and wharves provided said structures are so constructed on posts or pilings as to permit the unobstructed flow of the tide, do not obstruct navigation on the tidal creeks, and preserve the natural contour of the marshes.

(8) All other uses not delineated in § 190-3.1E are prohibited.

F. Within the areas defined as wetlands and wetlands buffers (as defined by §190-3.1A(1)(b)), permitted uses include any use that does not result in the erection of any structure or signs or alter the surface configuration by the addition of fill or dredging and that is otherwise permitted by this chapter and state and federal laws. Permitted uses are: [Amended 2012; 3-18-2017]

(1) Forestry: tree farming according to Best Management Practices - Forestry (Article XI) subject to the restrictions set forth in §190-3.1(H)(2)(e).

(2) Non-forestry: any cutting of trees for non-forestry purposes may be permitted after submittal and approval of a tree cut/removal permit with the Building Inspector's office. Removal of dead, diseased and dying trees is permitted without submittal and approval of a permit. Stumps and root systems shall remain intact in the ground; the stumps may be ground to the ground level. All shrubs and herbaceous

layers shall remain intact. All nonforestry cutting shall be completed using Best Management Practices - Forestry (Article XI).

(3) Agriculture, such as grazing, crop production, harvesting marsh hay and gathering cast-up seaweed for fertilizer according to Best Management Practices - Agriculture (Article XI) and Best Management Wetland Practices Agriculture - 2019, provided that such use does not cause significant increases in surface water or groundwater contamination by pesticides, fertilizers or toxic or hazardous materials, and that such use will not cause or contribute to soil erosion.

(4) Recognized conservation areas and nature trails and wildlife refuge.

(5) Passive recreation.

(6) Where there are existing streams and drainageways, swales, rain gardens, infiltration systems, functioning detention ponds or man-made water conveyance systems whose flow of water has become impeded by excessive vegetation of any kind or by fallen trees, logs, silt, natural detritus, or by any other means, the owner may have such vegetation or material cleared and removed and the condition corrected. [Amended 3-10-2020 by Art. 3]

(7) All other uses not delineated in § 190-3.1F are prohibited.

G. Uses permitted by special exception. [Amended 1997; 2012]

(1) Pipelines and transmission lines. Persons or corporations wishing to construct pipelines or transmission lines for the delivery of essential public services across any designated wetland in the Town of Rye must, in addition to complying with all other local and state regulations, apply for a special exception from the Board of Adjustment and deposit a performance bond with the Selectmen to ensure that post-construction conditions are restored as nearly as possible to the original grade and appearance along the construction route. The amount of the refundable bond shall be determined by the Selectmen sufficient to pay the full costs of site restoration should the applicant fail to comply with the intent of this subsection and terms of this permit and the remediation of any release. [Amended 3-10-2020 by Art. 3]

(2) Roads. The construction of roads and driveways requires a special exception from the Board of Adjustment, which may be issued where it is shown that, due to existing conditions, no alternative route is feasible, in addition to meeting the existing requirements for special exceptions. [Amended 3-10-2020 by Art. 3]

(3) Accessory buildings not intended for human habitation and not having a septic system.

(4) Water impoundment and removal by landowners only upon receipt of any necessary state and federal permits. This shall include impoundments such as stormwater detention ponds, berms, dams and drainage ditches. [Amended 3-18-2017]

(5) Aquaculture, provided a license is obtained from the New Hampshire Department of Fish and Game (NH F&G) and in accordance with rules adopted by NH F&G. See New Hampshire Administrative Rules Part Fis 807. [Amended 3-18-2017]

(6) Special exceptions may not be granted: [Amended 3-18-2017; 3-10-2020 by Art. 3]

(a) Unless it is essential to the productive use of portions of the land that are not subject to the Wetlands Conservation District.

(b) Unless it can be shown by a certified wetlands scientist (definition Article XI) that, to the maximum extent practicable, such construction shall have the least possible detrimental impact upon the wetland.

(c) Unless it can be shown by a certified wetlands scientist (definition Article XI) that no alternative feasible route or area exists which does not cross or alter a wetland compared to other alternatives.

(7) Economic advantage alone shall not be deemed sufficient reason for the above-mentioned exceptions.

H. Wetlands buffer. [Amended 1990; 2001; 2002; 2012; 3-11-2014]

(1) Buffer description. The wetlands buffer shall include all land:

(a) Within 100 feet of the edges of all tidal lands, marshes, bays, estuaries, rivers, and creeks and their tributaries, as defined by the highest flooding of the ocean tides;

(b) Within 100 feet of the edges of all natural perennial streams and vernal pools; as well as the edges of Eel Pond, Burke's Pond, Brown's Pond and East Rye Pond as defined by the high-water mark;

(c) Within 100 feet of the edges of wetlands, located within the Berry's Brook watershed, as depicted on a map titled "Berry's Brook Watershed Rye, New Hampshire Wetland Soils and Tax Parcels March 2003." Copies of the map are on file with the Town Clerk and in the Planning Department office;

(d) Within 100 feet of wetlands in Bailey's Brook, Seavey Creek, Witches Creek, and Parsons Creek as defined by the mean high-water mark;

(e) Within 100 feet of the edges of all natural perennial streams and vernal pools; ponds one acre or larger in size as defined by the mean high-water mark; and freshwater marshes, as defined by vegetation;

(f) Within 75 feet of edges of all other wetland that are not named in §190-3.1H(1)(a)-(e) or identified as isolated, non-bordering wetlands; and

(g) Within 25 feet of edges of isolated, non-bordering wetlands.

(2) Buffer restrictions. The following restrictions shall apply in the wetlands buffer. Where such restrictions conflict with other requirements of this chapter, the more protective regulation shall apply.

(a) Surface alteration by the addition of fill, excavation or dredging is prohibited.

(b) Septic systems are prohibited. Existing septic systems located in buffers may be replaced per NHDES only if no public or private sewer is available. Every effort should be made to reduce the violation distances and impacts, as determined by the Building Inspector. [Amended 3-18-2017]

(c) Uses permitted by § 190-3.1E and §190-3.1F are permitted, provided that there is no surface alteration by the addition of fill, excavation or dredging.

(d) Signs that identify historic, conservation or wildlife areas are permitted.

(e) Forestry and woodlot management is permitted in accordance with Best Management Practices - Forestry (Article XI), provided that no more than 50% of the basal area shall be cut. Each 200 linear feet or fraction thereof of frontage on the affected wetland or water resource from which trees are cut in excess of limits prescribed in this section shall constitute a separate offense. In other situations, thinning of existing brush and trees is permitted provided that there is no: [Amended 3-18-2017]

[1] Clear-cutting; or

[2] Cutting of live trees greater than 4 1/2 inches in diameter, measured at a height of 4 1/2 feet above ground level.

(f) Uses permitted by special exception pursuant to § 190-3.1G may be permitted by special exception in the wetlands buffer, subject to the requirements of § 190-3.1G. [Amended 3-10-2015]

(g) All other uses are prohibited.

#### I. Exemptions.

(1) Utilities such as the Rye Water District, Aquarion, the Rye Sewer Commissioners, Eversource and cable television providers are exempt from the requirements of the Wetlands Conservation District for trenching and for the installation of poles, conduits, mains, cables, and overhead wires for utilities located within the rights-of-way of Town roads, state highways and private streets and for trenching and installation of poles and overhead wires for utility replacements or repairs serving buildings existent as of the effective date of this exemption, which is March 8, 2016.

(2) Exempt work shall be accomplished in accordance with Best Management Practices (BMPs) as described in "Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials," NHDES, January 2004, as amended, and "Innovative Stormwater Treatment Technologies Best Management Practices Manual," NHDES, 2002, as amended. [Amended 3-10-2020 by Art. 3]