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RYE PLANNING BOARD
PROPOSED ZONING AMENDMENT 2017-05

Re: Amendment to the Wetlands Conservation District

- I. Amend the Section 301 Wetlands Conservation District (Note: Deleted language ~~struck through~~. New language ***emboldened and italicized***.)

301.1 Definition of District: The Wetlands Conservation District comprises any and all of the following areas within the Town of Rye: (Rev. 1995, Rev., March 2012)

- A. Tidal marshes, fresh water marshes, streams and ponds.
- B. Wetlands.

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, 12-20-94; Hydric Soils & 2010 Aerial Photo, Rye, NH 2010. (*Additional mapping resources available on line are:*

- *Town of Rye Axis GIS System: Map Select Search (Parcel #, Owner or Address), select Layer (NWI Wetland Map) (<http://www.axisgis.com/RyeNH/Default.aspx?Splash=True>);*
- *NH Wetlands Mapper: Select: Town of Rye, select: Political Boundaries (Tax Map Parcels), Wetlands and Soils (Wetlands NWI, NHDES Wetlands Base Map, and Hydric Soils) and Water and Watersheds (Lakes and Ponds, Rivers and Streams) (<http://nhwetlandsmapper.unh.edu>)*

301.2 Delineation of Wetlands: (Adopted, March 2012)

- A. *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 *Corps of Engineers Wetlands Delineation Manual, 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 3, April 2004), published by the New England Interstate Water Pollution Control Commission.
- B. Vernal pools shall be delineated based on the characteristics listed in the definition of vernal pools found in Appendix A.

301.3 Disputes about Wetlands Boundaries: Disputes about the locations of wetlands boundaries as determined by the *Building Inspector* or the *Planning Board* may be appealed to the *Zoning Board of Adjustment* as an administrative appeal pursuant to Section 701.1 of this ordinance. The zoning board of adjustment may call upon the services of an independent NH Certified Wetlands Scientist to examine said area and report his or her findings to the Board for their determination of the boundary. NH

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Certified Wetlands Scientist is interpreted to mean a person qualified in wetlands delineation and who is licensed by the State of New Hampshire. (Rev. 1992, 1995 & renumbered 1995, Rev.2012)

301.4 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. (Renumbered 1995 and 2012)

- A. To control the development of structures and land uses on naturally occurring wetlands, ~~this~~ *that* would contribute to pollution of surface and ground water by sewage *and stormwater runoff*.
- B. *To reduce the impact on wetlands of uses, development and re- development 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 Conservation District (Appendix A) and Low Impact Development techniques (Appendix A).*
- C. To prevent the destruction of natural wetlands *and their buffers* which provide flood protection, recharge the ground water supply, and the augmentation of stream flow during dry periods.
- D. *To minimize the spread of invasive plant species.*
- E. 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.
- F. To encourage those uses that can be appropriately and safely located in wetland areas.
- G. To preserve wetlands for other ecological reasons such as those cited in RSA 483-A. 482-A.
- H. To preserve and enhance those aesthetic values associated with the wetlands of this Town.
- I. To preserve and enhance those aesthetic values associated with the wetlands of this Town.
- J. *To restrict construction in wetlands to the maximum extent practicable.*
- K. *To preserve, protect, and enhance, potential water supplies and aquifers and aquifer recharge areas.*

301.5 Permitted Uses in Tidal Marshes and Fresh Water Marshes: Within the areas defined by S 301.1-A any use is permitted that does not result in the erection of any structure or sign larger than four (4) square feet, or alter the surface configuration by the addition of fill or dredging, and that is otherwise permitted by the Zoning Ordinance and State and Federal laws. (Renumbered 1995 and 2012)

- A. Tidal Marshes and ponds: There shall be no cutting of live trees with a diameter of four and one-half (4-1/2) inches or more, measured four and one-half (4-1/2) feet

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above ground level within the fifty (50) foot Border Zone of the tidal marshes and the ponds of S301.8 A.2. A woods road to a maximum width of fifteen (15) feet may be made and maintained. Removal of dead, diseased and dying trees is permitted. *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).

B. Agriculture, such as harvesting marsh hay and gathering cast-up seaweed for fertilizer *according to Best Management Practices-Agriculture (Appendix A) provided that such use does not cause increases in surface or groundwater contamination by pesticides, fertilizers or other toxic or hazardous substance(s), and that such use will not cause or contribute to soil erosion.*

C. Wildlife Refuge.

D. *Passive* Recreation such as boating, swimming, hiking, photography, and painting.

E. Conservation areas and nature trails.

F. Piers, wharves, floats 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.

G. 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.

H. All other uses not delineated in S 301.5 are prohibited.

301.6 Permitted Uses in Wetlands: 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 the Zoning Ordinance and State and Federal laws. Permitted uses are: (Renumbered 1995 and Amended 2012)

A. Forestry: tree farming *according to Best Management Practices-Forestry (Appendix A)*

B. Non-forestry: Any cutting of trees for non-forestry purposes may be permitted after submittal and approval of 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 ground level. All shrubs and herbaceous layers shall remain intact. All non-forestry cutting shall be completed using Best Management Practices – Forestry (Appendix A)

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C. Agriculture, such as grazing, crop production, harvesting marsh hay and gathering cast-up seaweed for fertilizer according to Best Management Practices-Agriculture (Appendix A) provided that such use does not cause significant increases in surface or groundwater contamination by pesticides, fertilizers or other toxic or hazardous substance(s), and that such use will not cause or contribute to soil erosion.

D. Recognized conservation areas and nature trails, wildlife refuge

E. Passive Non-motorized recreation.

F. Where existing streams and drainage ways, 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 this condition corrected.

G. All other uses not delineated in S 301.6 are prohibited.

301.7 Uses Permitted By Special Exception. (Renumbered 1995 and Amended 2012)

- A. **Pipelines and Transmission Lines:** Persons or corporations wishing to construct pipe lines 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 Zoning 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 paragraph and terms of his permit.
- B. **Roads:** The construction of roads and driveways requires a special exception from the Zoning 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. (Rev. 1997)
- C. **Accessory buildings** not intended for human habitation and not having a septic system. (Added, 2012)
- D. **Water impoundment and removal by land owners** *only upon receipt of any necessary State and Federal permits. This shall include impoundments such as stormwater detention ponds, berms, dams, and drainage ditches.* (Added, 2012)
- E. ~~Agriculture and Aquaculture~~, *provided a license is obtained from the NH Department of Fish and Game (NH F&G) and in accordance with rules adopted by NH F&G. See NH F&G Rules Part 807.* (Added, 2012)
- F. **Special Exceptions may not be granted:** (renumbered 2012)

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1. Unless it is essential to the productive use of land not so zoned.
2. Unless it can be shown *by a NH Certified Wetland Scientist (definition Appendix A)* that, *to the maximum extent practicable*, such construction shall have *the least possible* ~~minimal~~ detrimental impact upon the wetland.
3. *Unless it can be shown by a NH Certified Wetland Scientist (definition: Appendix A) that no alternative feasible route or area exists which does not cross or alter a wetland.*
4. Economic advantage alone shall not be deemed sufficient reason for the above mentioned exceptions.

301.8 Wetlands Buffer. (Amended 1990 & renumbered 1995 and 2012 & Rev. 3/11/14)

A. Buffer Description. The Wetlands Buffer shall include all land:
(Amended 2001, Rev 2012) (Rev 03/11/2014)

1. Within 100 feet of the edges of all tidal marshes, bays, estuaries, rivers, river tributaries and creeks, as defined by the highest flooding of the ocean tides; ; the edges of Eel Pond, Burke's Pond, Brown's Pond and East Rye Pond as defined by the high-water mark; the edges of all natural perennial streams and vernal pools; ponds one (1) acre or larger in size as defined by the high-water mark; and freshwater marshes, as defined by vegetation. (Rev 03/11/2014)
2. Within 75 feet of wetlands one (1) contiguous acre or larger in size. (Rev. 2002, Rev 2012)
3. Within 100 feet of wetlands one (1) contiguous acre or larger in size 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. (Adopted 2002, Rev 2012, Rev 3/11/2014)

B. Buffer Restrictions. The following restrictions shall apply in the Wetlands Buffer. Where such restrictions conflict with other requirements of this ordinance, the stricter regulation shall apply. (Amended 2002)

1. Surface alteration by the addition of fill, excavation or dredging is prohibited.
2. 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.*

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3. Uses permitted by S 301.5 are permitted, provided that there is no surface alteration by the addition of fill, excavation or dredging.
4. Signs that identify historic, conservation or wildlife areas are permitted.
5.
 - a. Forestry and woodlot management is permitted in accordance with *Best Management Practices-Forestry (Appendix A)*, ~~sound forestry management practices~~ provided that no more than fifty percent (50%) of the basal area shall be cut.
 - b. In other situations, thinning of existing brush and trees is permitted provided that there be no:
 1. Clear Cutting; or
 2. Cutting of live trees greater than four and one-half inches (4-1/2") in diameter, measured at a height of four and one-half feet (4-1/2') above ground level.
6. Uses permitted by Special Exception pursuant to S 301.7 may be permitted by Special Exception in the Wetlands Buffer, subject to the requirements of S 301.7. (Rev 3/10/15)
7. All other uses are prohibited.

301.9 Exemptions. Utilities such as the Rye Water District, Aquarion, the Rye Sewer Commission, Eversource and CATV providers are exempt from the requirements of the Wetlands Conservation District for trenching and for the installation of poles 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.

Exempt work shall be accomplished in accordance with Best Management Practices (BMP's) as described in "Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials", NH DES, January 2004, as amended; "Innovative Stormwater Treatment Technologies Best Management Practices Manual" NH DES, 2002 as amended; and "Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials", NH DES, January 2004, as amended.

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II. Amend and Additions to the Appendix A of Definitions (Note: Deleted language struck through. New language **emboldened and italicized**.)

AQUACULTURE: ~~The cultivation of the natural produce of water.~~ *The propagation and rearing of aquatic species and marine species and includes the planting, promotion of growth, harvesting and transporting of these species in, on, or from the waters of this State, or the operation of a fishing preserve, as defined by RSA 211:62-e, as amended.*

BEST MANAGEMENT PRACTICES (BMP) – Agriculture

“Manual of Best Management Practices (BMP’s) for Agriculture in New Hampshire” distributed and periodically by the New Hampshire Department of Agriculture, Markets, and Food, revised June, 2011, as amended (<http://agriculture.nh.gov/publications-forms/documents/bmp-manual.pdf>)

FORESTRY: *Forestry shall include the growing, stocking, cutting, or sale of forest trees of any size for habitat management, for producing timber, or for other forest products; and pre-commercial silvicultural activities including but not limited to timber stand improvement.*

BEST MANAGEMENT PRACTICES (BMP) – Forestry

- *“Best Management Practice for Erosion on Timber Harvesting Operations in New Hampshire, 2004”, as amended*
<http://www.nhdfi.org/library/pdf/Forest%20Protection/2004%20BMPs%20for%20Erosion%20Control.pdf>
- *“Best Management Practices for Forestry: Protecting New Hampshire’s Water Quality 2005”, as amended* https://extension.unh.edu/resources/files/resource000248_rep267.pdf
- *“Good Forestry in the Granite State (DRED)”, as amended*
<https://extension.unh.edu/goodforestry/assets/docs/goodforestry2010finalreducedsizesecure.pdf>

LOW IMPACT DEVELOPMENT TECHNIQUES: *Low impact development is a site planning and design strategy intended to improve, maintain or replicate predevelopment hydrology through the use of site planning, source control, and small-scale practices integrated throughout the site to prevent, infiltrate and manage runoff as close to its source as possible.*

BEST MANAGEMENT PRACTICES (BMP) – Wetlands Conservation District

- *“Best Management Practice for Urban Stormwater Runoff, NHDES, 1996”, as amended*
http://des.nh.gov/organization/divisions/water/wmb/tmdl/documents/stormwater_toc.pdf
- *“Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials, NH DES, January 2004”, as amended*
<http://des.nh.gov/organization/commissioner/pip/publications/wd/documents/wd-03-42.pdf>
- *“Innovative Stormwater Treatment Technologies Best Management Practices Manual, NH DES, 2002”, as amended*
<http://scholars.unh.edu/cgi/viewcontent.cgi?article=1314&context=prep>

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NH CERTIFIED WETLAND SCIENTIST: *A NH State Certified Wetland Scientist is defined as: "a person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified by RSA 310-A:84, RSA 301-A:76, II-a and II-b, is qualified to delineate wetland boundaries and prepare wetland maps in accordance with standards for identification of wetlands adopted by the New Hampshire Department of Environmental Services or the United States Army Corps of Engineers or its successor, and who has been duly certified by the Board."*

PASSIVE RECREATION: *Non-motorized recreational activities that typically occur in a natural setting, that do not have significant adverse impacts to natural, cultural, scientific, or agricultural values of the setting, and do not require structures. Such passive recreation uses include, but are not limited to walking, hiking, picnicking, nature observation, and cross-country skiing.*