

TOWN OF EFFINGHAM WETLANDS ORDINANCE

1.0 Title

This ordinance shall be known as the “Wetlands Ordinance of the Town of Effingham”

2.0 Authority

By the authority granted in NH RSA 674:16 and 674:21 and in the interest of public health, safety, and general welfare of the Town of Effingham, the Wetlands Ordinance is hereby established.

3.0 Purpose and Intent

The purpose of this Ordinance is to protect and regulate the use of wetlands and their buffer areas, as defined herein.

The intent of this ordinance is to:

- A. Insure the protection of wetland resources from activities that would adversely affect their functions and values to:
 1. Prevent damage of property and degradation of surface and ground waters by maintaining the capacity of wetlands to store flood waters and manage stormwater;
 2. Prevent or minimize soil erosion and sedimentation of surface waters and wetlands;
 3. Prevent the loss of unique and unusual natural areas;
 4. Prevent the degradation of surface and ground water quality and quantity;
 5. Prevent the loss or degradation of wildlife habitats and maintain ecological balances;
 6. Prevent the degradation of potential water supplies and existing aquifers and aquifer recharge areas;
 7. Prevent the loss or degradation of a diversity of recreational benefits such as hunting, fishing, canoeing, bird watching, and hiking;

8. Prevent the loss of the visual and aesthetic qualities of wetlands including their contribution to open space, character, and overall scenic beauty of the landscape.
- B.* Insure the protection of wetland buffer areas from activities that would adversely affect their ability to protect wetlands from degradation to:
1. Prevent erosion and sedimentation by stabilizing soil;
 2. Moderate the effects of stormwater runoff by filtering sediment, nutrients and harmful or toxic substances, and moderating thermal discharges;
 3. Protect and maintain wildlife habitat;
 4. Support and protect wetland plant species;
 5. Reduce the disturbances to wetland resources caused by intrusion of human activity;
- C.* Prevent the expenditure of municipal funds for the purposes of providing and or maintaining essential services and utilities that might be required as a result of the destruction or degradation of wetlands.

4.0 Definitions

Alteration

Any change or modification of land, water, vegetation, or existing structure in a wetland and /or its buffer area.

Best Management Practices

Measures or practices used to minimize the impact on wetland and water resources, such as those used to control erosion or reduce water quality degradation.

Certified Soil Scientist

A person who, by reason of his special knowledge of pedagogical principles acquired by professional education and practical experience, as specified by RSA 310-A: 84, is qualified to practice soil science, and who has been duly certified by the State Board of Natural Scientists.

Certified Wetlands Scientist

A person who, by reason of multi-disciplinary expertise in wetland science acquired by professional education and practical experience, as specified by RSA 310-A: 84, is qualified to practice wetland science, and who has been duly certified by the board of wetland scientists.

Dredge

To dig, excavate, or otherwise disturb the contour or integrity of sediments in the bank or bed of a wetland or surface water body.

Hydric Soils

Soils that are saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part, as defined by the USDA Soil Conservation Service; National Technical Committee for Hydric Soils.

Hydrophytic Vegetation

Plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

Pollution

The contamination or alteration of the physical, biological, or chemical properties of wetland or water resources from the discharge or deposition of any waste or other materials. This includes, but is not limited to sewage and sedimentation.

Poorly Drained Soils

Soils in which water moves so slowly that the water table remains at or near the ground surface for a large part of the year (6-9 months) as defined by the National Cooperative Soil Survey.

Prime Wetlands

Wetlands which are of substantial significance due to their “size, unspoiled character, fragile condition, or other relevant factors” and designated as Prime Wetlands under RSA 482-A:15.

Special Use Permit

A permit that may be granted by the Planning Board for a use not otherwise permitted under the Wetlands Ordinance.

Surface Waters

Those portions of “waters of the state,” as defined by RSA 482A:4, which have standing or flowing water at or on the surface of the ground. This includes but is not limited rivers, streams, lakes, and ponds.

Toxic and Hazardous Materials

Any materials and/or substances that are regulated under the NH Solid Waste Rules, Administrative Rules Env-Ws 100-300 and Env-Ws 2100-2800 administered by the NH DES Waste Management Division.

Very Poorly Drained Soils

Soils in which water is removed from the soil so slowly that the water table remains at or on the ground surface for the greater part of the year (9-10 months) as defined by the National Cooperative Soil Survey.

Wetlands

Those areas that are inundated or saturated by surface or groundwaters at a frequency and duration sufficient to support, and that under normal conditions do support a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs, and similar areas.

Wetlands Buffer

An area that is designed to remain vegetated in an undisturbed and natural condition to protect adjacent wetland functions and values from upland impacts and provide habitat for wildlife. An area of land surrounding wetlands for the purpose of limiting the encroachment of uses which may contribute to the pollution of surface and groundwater, and prevent the destruction of watershed areas and wetlands that provide flood protection.

Wetlands Hydrology

In general terms, permanent or periodic inundation or soil saturation sufficient to create anaerobic conditions in the soil.

5.0 Wetlands

5.1 Delineation of Wetland Boundaries

- A. Wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetland hydrology in accordance with the techniques outlined in the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, (January 1987).
- B. Delineation based on hydrophytic vegetation or hydric soils alone shall be sufficient for minor subdivisions provided the vegetation or soil has not been disrupted by artificial planting or past alterations.
- C. The hydric soils component of a delineation produced under A. or B. above shall be determined in accordance with the manual, Field Indicators for Identifying Hydric Soils in New England (May 1, 1995), Published by the New England Interstate Water Pollution Control Commission.

5.2 Wetlands Incorrectly Delineated

- A. Where it is determined that an area has been incorrectly delineated as a wetland or that an area not so designated was subsequently found to meet the criteria for wetlands designation the Planning Board shall determine whether the regulation contained herein apply.

- B. The Planning Board shall make its judgment under this section upon the determination by a qualified consultant on the basis of additional on-site investigation or other suitable research. This evidence shall be acceptable only when presented in written form to the Planning Board. Any investigation or studies deemed necessary by the Planning Board shall be conducted at the expense of the landowner, applicant or developer.

5.3 Wetland Buffers

- A. Wetland buffer areas shall be required for all wetlands. All buffers shall be measured from the wetland boundary. The width of the wetland buffer shall be 100 feet, horizontal distance, from the boundary of all wetlands contiguous to surface waters.
- B. Wetland buffers shall be retained in their natural condition. Where wetland buffer disturbance has occurred during construction, revegetation shall be required.

6.0 Permitted Uses

The following uses are permitted in all wetlands and wetland buffers provided that (a) they will not require the erection or construction of a building or structure; (b) they will not require the recontouring or grading of the land; (c) no draining, dredging, filling or change in the flow of water will result; and (d) the activity will not result in the pollution of wetlands and surface and ground waters.

- A. Logging operations which (a) utilize best management practices as described in Best Management Practices for Erosion Control on Timber Harvesting Operations in NH; (b) comply with all applicable state laws including: obtaining and filing an intent to cut form according to RSA 79:10 and filing a complete Notification of Forest Management Activities Having Minimum Wetlands Impact according to RSA 482-A.
- B. Agricultural activities and operations as defined in NH RSA 21:34a and as governed by RSA 430 provided such activities and operations are in conformance with the most recent best management practices determined by the US Department of Agriculture Soil Conservation Service, The NH Department of Agriculture, and UNH Cooperative Extension.
- C. Outdoor recreational activities including hunting, hiking, fishing, swimming, and boating.
- D. Wildlife or fisheries management activities;
- E. Educational activities and scientific research

- F. Activities incidental to ordinary residential use such as normal ground maintenance including mowing, trimming of vegetation and removal of dead or diseased vegetation around a residence. This shall not include the regrading or recountouring of land or the clearing of vegetation

No person shall conduct or maintain other uses without first obtaining a Special Use Permit.

7.0 Prohibited Uses

- A. The establishment or expansion of:
 - 1. salt storage sheds;
 - 2. automobile junk yards;
 - 3. solid or hazardous waste facilities;
- B. The bulk storage of chemicals, petroleum products, or toxic and hazardous materials;

8.0 Uses Requiring a Special Use Permit

The following uses in Wetlands require a Special Use Permit:

- A. Activities that alter or remove soils or vegetation including, but not necessarily limited to, clearing, dredging, draining, or filling.
- B. Activities that alter the natural drainage system resulting in a change in the flow of water, water level or water table.
- C. The construction or alteration of structures, streets, roads, and other access ways and utility right-of-way easements, including powerlines and pipelines.
- D. Water impoundments for the purpose of creating a waterbody for wildlife, on-site detention of stormwater runoff and/or recreational uses.
- E. The undertaking of a use not otherwise permitted in the Wetlands that is permitted in the underlying zoning district, if it can be shown that such proposed use is not in conflict with any and all of the purposes and intentions listed in Section 3.0 of this ordinance.

9.0 Standards for Granting a Special Use Permit

9.1 Administration

- A. The Planning Board shall be responsible for the administration of the Special Use Permit. The Planning Board shall hold at least one public hearing after public notice during the Special Use Permit review. The application shall be referred to the Conservation Commission for review and comment at least 30 days prior to the public hearing. The Planning Board shall review the application within 90 days, unless the applicant and the Planning Board agree to an extension for a set period of time.
- B. Any person found to be conducting or maintaining an activity without the prior authorization of the Planning Board, or violating any other provision of this ordinance, shall be subject to the enforcement proceedings and penalties prescribed in section 10.0 of this ordinance and any other remedies provided by law.
- C. If granted, the Special Use Permit shall be valid for a period of two years from the date of issue and shall expire if not implemented by that time, unless a longer period is specified and approved by the Planning Board in consultation with the Conservation Commission.

9.2 Application Requirements

Applications for a Special Use Permit shall include the following:

- A. Site Plan at a scale of 1"=100' or larger indicating the following:
 - 1. Lot or lots of record to be impacted;
 - 2. Names and addresses of abutting property owners;
 - 3. Wetlands delineation;
 - 4. Computation of the area to be impacted;
 - 5. Soils type (in accordance with Order 1 Soil Mapping Standards for NH, within NCSS mapping standards developed by the USDA Soil Conservation Service in Cooperation with the Soil Society of Northern New England.);
 - 6. Vegetation types;
 - 7. Drainage;

8. Other significant natural features;
 9. Proposed land use/activities;
- B. Project report including the following:
1. Description of the ecological communities;
 2. Functions of the wetland;
 3. Effects of the impact on the wetland;
 4. Measures taken to minimize the impact;
 5. Proposed land use/activities;

The site plan submitted for subdivision or site plan application to the Planning Board is acceptable if it meets all of the above requirements.

10.0 Enforcement

- A. The Planning Board is hereby authorized and empowered to adopt such rules and require such reasonable fees as are necessary for the efficient administration of this ordinance.
- B. The Selectmen or their appointed agent shall be responsible for enforcement of the provisions of this ordinance.
- C. Upon any well founded information that this ordinance is being violated, the Planning Board or Conservation Commission, shall report the violation to the Selectmen. Upon receipt that this ordinance is being violated, the Selectmen or their appointed agent shall notify, in writing, the owner or tenant of the property on which the violation is alleged to occur with a copy of such notification to the Planning Board. If appropriate, the Selectmen shall also notify the NH Wetlands Board, US Corps of Engineers, or such other State or Federal Agency as may have jurisdiction of the violation.
- D. Any person in violation of this ordinance or portion thereof, shall be penalized in accordance with NH RSA 676:15-17.