

**TOWNSHIP OF MAHWAH
ORDINANCE NO. 1697**

**AN ORDINANCE OF THE TOWNSHIP OF MAHWAH, COUNTY OF BERGEN
AND STATE OF NEW JERSEY CREATING CHAPTER XXX IN THE TOWNSHIP
CODE OF THE TOWNSHIP OF MAHWAH ENTITLED: STREAM
CORRIDOR/RIPARIAN BUFFER.**

BE IT ORDAINED by the Township Council of the Township of Mahwah, County of Bergen and State of New Jersey as follows:

Section 1

The Code of the Township of Mahwah, Chapter XXX: Stream Corridor/Riparian Buffer shall be created as follows:

Riparian Zones

§ 30-1 Definitions

Acid producing soils means soils that contain geologic deposits of iron sulfide minerals (pyrite and marcasite) which, when exposed to oxygen from the air or from surface waters, oxidize to produce sulfuric acid. Acid producing soils, upon excavation, generally have a pH of 4.0 or lower. After exposure to oxygen, these soils generally have a pH of 3.0 or lower. Information regarding the location of acid producing soils in New Jersey can be obtained from local Soil Conservation District offices.

Applicant means a person, corporation, government body or other legal entity applying to the Planning Board, Board of Adjustment or the Construction Office proposing to engage in an activity that is regulated by the provisions of this ordinance, and that would be located in whole or in part within a regulated Riparian Zone.

Category One waters or C1 waters shall have the meaning ascribed to this term by the Surface Water Quality Standards, N.J.A.C. 7:9B, for purposes of implementing the antidegradation policies set forth in those standards, for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, and other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources.

Intermittent Stream means a surface water body with definite bed and banks in which there is not a permanent flow of water and shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys.

Lake, pond, or reservoir means any surface water body shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area

(SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys; that is an impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water. This excludes sedimentation control and stormwater retention/detention basins and ponds designed for treatment of wastewater.

Perennial stream means a surface water body that flows continuously throughout the year in most years and shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys.

Riparian zone means the land and vegetation within and directly adjacent to all surface water bodies including, but not limited to lakes, ponds, reservoirs, perennial and intermittent streams, up to and including their point of origin, such as seeps and springs, as shown on the New Jersey Department of Environmental Protection's GIS hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys. There is no riparian zone along the Atlantic Ocean nor along any manmade lagoon or oceanfront barrier island, spit or peninsula.

Special Water Resource Protection Area or SWRPA means a 300 foot area provided on each side of a surface water body designated as a C1 water or tributary to a C1 water that is a perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein and shown on the USGS quadrangle map or in the County Soil Surveys within the associated HUC 14 drainage, pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h).

Surface water body(ies) means any perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein. In addition, any regulated water under the Flood Hazard Area Control Act rules at N.J.A.C. 7:13-2.2, or State open waters identified in a Letter of Interpretation issued under the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-3 by the New Jersey Department of Environmental Protection Division of Land Use Regulation shall also be considered surface water bodies.

Threatened or endangered species means a species identified pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Endangered Species Act of 1973, 16 U.S.C. §§1531 et seq. or the Endangered Plant Species List, N.J.A.C. 7:5C-5.1, and any subsequent amendments thereto.

Trout maintenance water means a section of water designated as trout maintenance in the New Jersey Department of Environmental Protection's Surface Water Quality Standards at N.J.A.C. 7:9B.

Trout production water means a section of water identified as trout production in the New Jersey Department of Environmental Protection's Surface Water Quality Standards at N.J.A.C. 7:9B.

§ 30-2 Intent and Authority

It is the intent of this Article to provide compliance with N.J.A.C. 7:15-5.25(g)3 which requires municipalities to adopt an ordinance that prevents new disturbance for projects or activities in riparian zones. Authority is provided or limited as follows:

- A. Compliance with the riparian zone requirements of this Article does not constitute compliance with the riparian zone or buffer requirements imposed under any other Federal, State or local statute, regulation or ordinance.
- B. Use powers given to Township of Mahwah under the provisions of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.*, which authorizes each municipality to plan and regulate land use in order to protect public health, safety, and welfare through the protection and maintenance of native vegetation in riparian areas. Township of Mahwah is also empowered to adopt and implement this ordinance under provisions provided by the following legislative authorities of the State of New Jersey:
 - 1. Water Pollution Control Act, N.J.S.A. 58:10A-1 *et seq.*
 - 2. Water Quality Planning Act, N.J.S.A. 58:11A-1 *et seq.*
 - 3. Spill Compensation and Control Act, N.J.S.A. 58:10-23 *et seq.*
 - 4. Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 *et seq.*
 - 5. Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 *et seq.*

§ 30-3 Riparian Zone Protection

Riparian zones adjacent to all surface water bodies as described below in this paragraph shall be protected from avoidable disturbance:

- A. The riparian zone shall be 300 feet wide along both sides of any Category One water (C1 water), and all upstream tributaries situated within the same HUC 14 watershed.
- B. The riparian zone shall be 150 feet wide along both sides of the following waters not identified in A. above:
 - (1) Any trout production water and all upstream waters (including tributaries);
 - (2) Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;
 - (3) Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and
 - (4) Any segment of a water flowing through an area that contains acid producing soils; and
- C. For all other surface water bodies, a riparian zone of 50 feet wide shall be maintained along both sides of the water.

The portion of the riparian zone that lies outside of a surface water body is measured landward from the top of bank. If a discernible bank is not present along a surface water body, the portion of the riparian zone outside the surface water body is measured landward as follows:

- (1) Along a linear fluvial or tidal water, such as a stream or swale, the riparian zone is measured landward of the feature's centerline;
- (2) Along a non-linear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit; and
- (3) Along an amorphously-shaped feature such as a wetland complex, through which water flows but which lacks a discernible channel, the riparian zone is measured landward of the feature's centerline.

The applicant or designated representative shall be responsible for the initial determination of the presence of a riparian zone on a site, and for identifying the area on any plan submitted to the Township of Mahwah in conjunction with an application for a construction permit, subdivision, land development, or other improvement that requires plan submissions or permits. This initial determination shall be subject to review and approval by the municipal engineer, governing body, or its appointed representative, and, where required, by the New Jersey Department of Environmental Protection.

§ 30-4 Exceptions

- A. The following disturbances are Excepted:
 - (1) Redevelopment within the limits of existing impervious surfaces; and
 - (2) New disturbance in the riparian zone necessary to protect public health, safety or welfare; to provide an environmental benefit; to prevent extraordinary hardship on the property owner peculiar to the property; or to prevent extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment.
- B. An Exception to any of the disturbances listed in A.(1) above shall be granted by the Municipal Engineer upon proof by virtue of submission of appropriate maps and drawings, that the proposed redevelopment is within the limits of impervious surfaces that existed at the time of passage of this ordinance and shall be in conformance with the Stormwater Management Rules, N.J.A.C. 7:8, and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.
- C. For all riparian zones an Exception to any of the disturbances listed in A.(2) above shall be granted by the Zoning Board of Adjustment upon proof by virtue of submission of appropriate maps, drawings, reports and testimony, that the disturbance protects public health, safety or welfare; provides an environmental benefit; prevents extraordinary hardship on the property owner peculiar to the property; or prevents extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment.
- D. Appeals of a determination by the Municipal Engineer made in accordance with B. above may be made to the Planning Board. The party contesting the determination or decision shall have the burden of proof in case of any such appeal.

§ 30-5 Adjustments

Adjustments to the riparian zones established by this article are allowed to the extent they comply with the Stormwater Management Rules (N.J.A.C. 7:8), the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), and the Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38), and shall be subject to review and approval by the New Jersey Department of Environmental Protection, unless exempt.

§ 30-6 Permits-By-Rule

The Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), Subchapter 7. PERMITS-BY-RULE, establishes permits-by-rule for certain regulated activities. This Article hereby adopts by reference said Subchapter as it exists at the time of passage of this ordinance and as it may change from time to time, as a means of allowing regulated activities in the riparian zone without any other permits or approvals. In addition, any permit-by-rule provision that requires notification to the New Jersey Department of Environmental Protection shall also be copied to the Township of Mahwah Municipal Engineer.

§ 30-7 ENFORCEMENT

A prompt investigation shall be made by the appropriate personnel of the Township of Mahwah, of any person or entity believed to be in violation hereof. If, upon inspection, a condition which is in violation of this Ordinance is discovered, a civil action in the Special Part of the Superior Court, or in the Superior Court, if the primary relief sought is injunctive or if penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process. Nothing in this Ordinance shall be construed to preclude the right of the Township of Mahwah pursuant to N.J.S.A 26:3A2-25, to initiate legal proceedings hereunder in Municipal Court. The violation of any section or subsection of this Ordinance shall constitute a separate and distinct offense independent of the violation of any other section or subsection, or of any order issued pursuant to this Ordinance. Each day a violation continues shall be considered a separate offense.

Section 2

Conflicts:

All ordinances, parts of ordinances, or other local requirements that are inconsistent or in conflict with this ordinance are hereby repealed to the extent of such inconsistencies and the provisions of this ordinance apply.

Section 3

Severability:

1. Interpretation: This Ordinance shall be so construed as not to conflict with any provision of New Jersey or Federal law.
2. Notwithstanding that any provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the Ordinance shall continue to be of full force and effect.

3. The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning and land use regulations.

Section 4

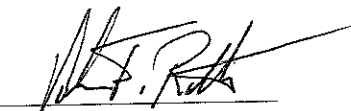
This ordinance shall take effect immediately upon final adoption and publication as provided by law.

Ordinance No. 1697

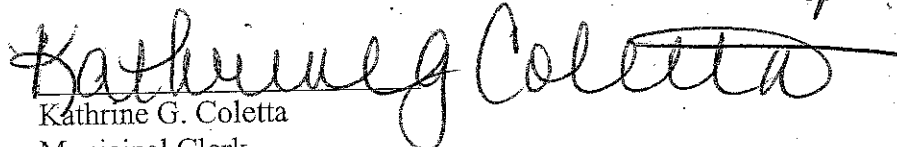
Page: 7

Dated: August 2, 2011

Attest

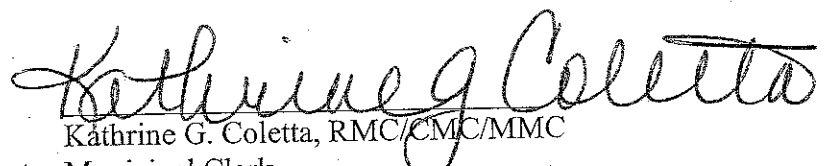


John F. Roth
Council President



Kathrine G. Coletta
Municipal Clerk

I, Kathrine G. Coletta, Municipal Clerk of the Township of Mahwah, hereby certify that the within Ordinance was passed and adopted at a meeting of the Township Council held on the 28th day of July, 2011.



Kathrine G. Coletta, RMC/CMC/MMC
Municipal Clerk