

Chapter XXVIII Wetlands Protection By-Law

Section 1.0 Purpose

The purpose of this Chapter is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Mendon by controlling activities deemed by the Conservation Commission likely to have an adverse effect, immediate or cumulative, upon wetland values, including but not limited to the following: protection of public or private water supply; protection of groundwater; flood control; erosion and sediment control; storm damage prevention; prevention of water pollution; fisheries; wildlife habitat; rare species habitat including rare plant and animal species; recreational value; protection of surrounding land and other homes or buildings; protection of surrounding land from predicted increases in flood frequency & intensity; protection of surrounding land to provide improved water filtration capacity, under predicted future increases in precipitation intensity, water temperatures and eutrophication impacts, (collectively the "Resource Area values protected by this By-Law") deemed important to the community. Presumptions of significance contained in 310.CMR 10.00 shall extend to said values.

Section 2.0 Jurisdiction

Except as permitted by the Conservation Commission or as provided in this Bylaw or its Regulations, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, impact, or otherwise alter the following Resource Areas:

- a. Any freshwater wetlands: including marshes; wet meadows; bogs; swamps; isolated wetlands; springs; banks; reservoirs; lakes; ponds; rivers; brooks and creeks, or perennial or intermittent streams;
- b. Any land under the aforementioned waterways and waterbodies;
- c. Any wetlands bordering on the aforementioned resource areas;
- d. Any adjoining lands out to a distance of 100 feet of all aforementioned resource areas known as the Buffer Zone;
- e. Any Vernal Pool, including Vernal Pools not certified by the MassWildlife Natural Heritage and Endangered Species Program, and adjoining land out to a distance of 100 feet known as the Vernal Pool Habitat;
- f. Any land within 200 feet of perennial streams or rivers known as the Riverfront Area;
- g. Any land subject to flooding or inundation by ground water, surface water, or storm flowage (bordering or isolated).

Collectively all such wetland Resource Areas and lands abutting any of the aforesaid Resource Areas shall be deemed to be Resource Areas protected by this Bylaw.

Section 3.0 Definitions

Except as may be otherwise provided in this bylaw or in regulations of the Commission, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act (M.G.L. Ch. 131, § 40 and regulations (310 CMR 10.00).

The term “*Alter*” means, without limitation, the following actions when undertaken upon or affecting any of the areas subject to protection under the By-Law:

- a. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b. Changing the preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- c. Drainage, or other disturbance of water level or water table;
- d. Dumping, discharging, or filling with any material which may degrade water quality;
- e. Placing of fill, or removal of material that would alter elevation;
- f. Driving of piles, erection, expansion or repair of buildings, or structures of any kind;
- g. Placement of obstructions or objects in water;
- h. Destruction of plant life including cutting or trimming of trees and shrubs;
- i. Changing temperature, biochemical oxygen demand, or other physical or chemical characteristics of any waters;
- j. Any activities, changes, or work which would cause or tend to contribute to pollution of any body of water or groundwater; and
- k. Incremental activities which have, or may have, a cumulative adverse impact on the Resource Areas protected by the By-Law.

The term “*Bank*” shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

The term “*No Build Zone*” means that portion of the Buffer Zone up gradient of the No Disturb Zone which extends 50 feet from the edge of the Resource Area. Except as otherwise provided in these regulations, no buildings or structures shall be permitted in the No Build Zone. Prohibited activities include but are not limited to, construction of any structure, installation of any impervious surface, and any work requiring a building permit.

The term “*No Disturb Zone*” means that portion of the Buffer Zone which extends 25 feet from the edge of the Resource Area. Except as otherwise provided in this By-Law or associated Regulations, no activity is permitted within 25 feet of the delineated edge of Wetland Resource Areas. This standard has been adopted because the alteration of land immediately adjacent to a wetland is likely to result in the alteration of the wetland itself. Examples of alterations include from extension of lawn, depositing yard waste and clearing of vegetation.

The term “*Person*” shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the

Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

The term "*Pond*" shall follow the definition of 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply. Man-made retention or detention basins, swimming pools, lined fishponds, and wastewater treatment lagoons shall not be considered ponds.

The term "*Rare Species*" shall include, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

The term "*Rare Species Habitat*" means those areas providing habitat for species of wildlife and /or plants listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife.

The term "*Vernal Pool*" means, in addition to scientific definitions found in 310 CMR 10.00, any confined basin or depression not occurring in existing lawns, gardens, or landscaped areas, which in most years holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibians, reptiles, or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The Mendon Conservation Commission has the discretionary authority to protect a vernal pool when it is shown to provide vernal pool wildlife habitat function despite the lack of official certification by the state. The boundary of the Resource Area for Vernal Pools shall be 100 feet outward from the mean annual high-water line defining the depression. Unless compelling evidence is provided to the contrary, no project or activity shall have an adverse effect on a Vernal Pool by altering its topography, soil structure, plant community, composition, hydrologic regime and/or water quality.

Section 4.0 *Exemptions and Exceptions*

The application and permit required by the By-Law shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, sewer, telecommunications services; provided that written notice has been given to the commission at least 14 days prior to the commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

The application and permit required by the By-Law shall not be required for work performed for normal maintenance or improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.04.

The application and permit required by the By-Law shall not be required for emergency projects necessary for the protection of the health and safety of the citizens of Mendon, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof or by the Town; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent, in writing, certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

Except where otherwise stated in this section, the minor activity exemptions provided under the Wetlands Protection Act (G.L. c. 131, § 40) and regulations promulgated pursuant thereto (310 CMR 10.00) shall apply to the wetland resource areas protected under this bylaw.

Section 5.0 Applications and Fees

Written application of a Notice of Intent (NOI, the permit application) shall be filed with the Commission to perform activities regulated by this bylaw affecting resource areas protected by this bylaw. This application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit pursuant to this bylaw.

The Commission in an appropriate case may accept as the application and plans under this bylaw any application and plans filed under the Wetlands Protection Act (M.G.L. Ch. 131 §40) and regulations (310 CMR 10.00), together with such other information and plans as is required by this bylaw and regulations issued hereunder.

Any person desiring to know whether a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such Request for Determination of Applicability (RDA) or Abbreviated Notice of Resource Area Delineation (ANRAD) filed under the Wetlands Protection Act shall include information and plans as deemed necessary by the Commission.

At the time of an application, the applicant shall pay a filing fee, as specified in the Regulations of the Commission, to the Town of Mendon to be put into an account established pursuant to M.G.L. c. 44, Sec. 53 E 1/2, which account may be drawn upon by the Commission as necessary to carry out the provisions of this by-law. Accordingly, the combined filing fees of all applicants are pooled for uses directly related to the By-Law, including salaries, administration, office supplies, enforcement, postage, and miscellaneous costs. These fees are in addition to those required by the Massachusetts Wetlands Protection Act. The Commission shall waive the filing fee for an application or request filed by a government agency.

Upon receipt of a permit or other applications, RDA, ANRAD, COC or other request, the Commission may, at the expense of the applicant, retain an independent consultant, including engineers, wetlands scientists, wildlife biologists or other experts, for the purpose of providing the Commission with the data, analysis, or other information deemed by the Commission to be reasonably necessary or appropriate to assist the Commission in reviewing the application or rendering its decision, in conformity with the provisions of M.G.L. Ch. 44, § 53G, and with the rules promulgated by the Commission for hiring outside consultants under M.G.L. Ch. 44, § 53G, which are incorporated herein by reference. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

Section 6.0 Notice of Hearings

Any person filing an application, NOI or ANRAD or other request, with the Conservation Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters also shall include a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any permit application, RDA, or ANRAD with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the municipality. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application, RDA, or ANRAD unless an extension is authorized in

writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials.

The Commission shall issue its permit Order of Conditions (OOC), other order or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (G.L. Ch.131 §40) and regulations (310 CMR 10.00).

Section 7.0 Permits and Conditions

If the Commission after a public hearing determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the wetland values protected by this bylaw, the Commission shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the performance standards and other requirements in this bylaw and the regulations issued hereunder, for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this bylaw, and where no conditions are adequate to protect those values.

A permit shall expire three years from the date of issuance. The Commission may extend a permit for one or more periods of up to three years each, upon written request made at least 30 days prior to the expiration of the permit.

For good cause, the Commission may revoke or modify any permit, DOA, or ORAD, or any other order issued under this bylaw upon reasonable notice to the permit holder, and upon a vote a majority of the Commission at a duly noticed public hearing. Requests for amendments to permits shall follow the procedures set forth in MassDEP Wetlands Policy 85-4.

The Commission in an appropriate case may combine the decision issued under this bylaw with the permit DOA, ORAD, or Certificate of Compliance (COC) issued under the Wetlands Protection Act.

No work proposed in any application shall be undertaken until the permit, or ORAD, issued by the Commission with respect to such work has been recorded in the Worcester Registry of Deeds or, if the land affected thereby be registered land, in the Registry

Section of the Land Court for the Worcester District, and until the holder of the permit certifies in writing to the Commission that the permit has been so recorded.

Section 8.0 Rules and Regulations

The Commission shall be authorized to promulgate Rules and Regulations (“Regulations”) to effectuate the purposes of this Bylaw at a public hearing for which one week’s notice has been provided in a newspaper of general circulation in the Town. Such Regulations shall take effect when voted and filed with the Town Clerk. Failure by the Commission to promulgate such Regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw. At a minimum these regulations shall reiterate the terms defined in this bylaw, define additional terms not inconsistent with the bylaw, and impose filing and consultant fees.

Section 9.0 Security

As a part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring replication or mitigation) be secured wholly or in part by one or more of the methods described below:

- a. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit;
- b. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant, and upon approval as to form by Town Counsel.

Section 10.0 Enforcement

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

The Commission or its agent may enter upon privately owned property for the purpose of carrying out its duties under this By-Law and may make or cause to be made such examination or survey as deemed necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have the authority to enforce this By-Law, its regulations and permits by violation notices, enforcement orders, civil and criminal court actions, and non-criminal citations under M.G.L Ch. 40 §21 D. Any person who violates provisions of this By-Law may be ordered to restore the property to its original condition or take other action deemed necessary to remedy such violations or may be fined or both.

Upon request of the Commission, the Select Board and Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police and/or Town Counsel shall take legal action for enforcement under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this bylaw, regulations hereunder, or permits issued hereunder, may be punished by a fine of \$300 per day per offense. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, regulations, or permit violated shall constitute a separate offense. As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in M.G.L. Ch. 40 §21D, which has been adopted by the Town in Chapter 1, Section 3 of the General By-Laws.

Section 11.0 Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the Resource Area protected by this By-Law. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant permit with conditions.

Section 12.0 Appeals

A decision of the Commission shall be reviewable in the Superior Court in accordance with M.G.L. Ch. 249 §4.

Section 13.0 Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (M.G.L. Ch. 131 §40) and regulations (310 CMR 10.00) thereunder. It is the intention of this bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations.

Section 14.0 Severability

If any provision, paragraph, sentence, or clause of this by-law shall be held invalid for any reason, all other provisions shall continue in full force and effect.