

## CHAPTER 18 WETLANDS

### PROTECTION

#### I. Purpose

The purpose of this By-Law is to protect the wetlands, related water resources, and adjoining land areas in the Town of Dracut by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, ground water, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, fisheries, shellfish, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, and recreation values, deemed important to the community (collectively, the "resource area values protected by this bylaw"). This bylaw is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act, M.G.L. Chapter 131 Section 40 and Regulations thereunder, 310 CMR 10.00.

#### II. Jurisdiction

Except as permitted by the Conservation Commission pursuant to this by-law, or as otherwise allowed in this bylaw, no person shall fill, dredge, build upon, degrade, discharge into or otherwise alter any Resource Area or Buffer Zone as defined in Section XI of this bylaw. It shall be assumed that significant adverse effect on the wetland values protected by this bylaw will result from any filling, dredging, building or other alteration within a Resource Area, land subject to flooding or inundation by groundwater or surface water, or within 50 feet of the edge of any freshwater wetland, vernal pool, bank, reservoir, pond of any size, land under waterbodies, or any marsh, wet meadow, bog or swamp.

The construction of any building or structure is prohibited within 50 feet (the No Build Zone) feet of any bank, fresh-water wetland, beach, flat, marsh, wet meadow, bog, swamp or lands bordering or on any estuary, creek, river, stream, or lake or any land under said waters or within the vernal habitat zone.

Construction of a building or structure shall not include any reconstruction, alteration, or structural change within the footprint of a building existing on November 8, 1993.

Applicant may seek a waiver of the No Build Zone at the discretion of the Commission provided they can demonstrate:

1. There are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with this bylaw,
2. Avoidance, minimization, and mitigation have been employed to the maximum extent possible,
3. The project results in a net benefit to the resource area values, or
4. The waiver is needed to accommodate an overriding public interest or to avoid a decision so restrictive as to constitute a public taking without compensation.

A request for a waiver shall be made in writing to the Commission and be included in the initial request for approval (e.g. Notice of Intent) and shall include how the request meets one of the four criteria above.

### III. Conditional Exempts

#### Public Utilities

The application and permit required by this bylaw 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, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications adopted by the Commission.

#### Agri-culture

The application and permit required by this bylaw shall not be required for work performed or for normal maintenance or improvement of land which is lawfully in agricultural use (as defined in M.G.L. Chapter 131 Section 40 and Regulations 310 CMR 10.00), at the time the work takes place; provided that when there is doubt as to whether or not an agricultural activity is exempt, written notice shall be given to the Commission prior to commencement of work and be subject to the Determination of Applicability process.

#### Emergency Projects

The application and permit required by this bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, 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; 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 certifies the works as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purpose 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.

Certain "minor" activities, if conducted in the buffer zone or Riverfront Area, are exempt from review under the Wetlands Protection Act (310 CMR 10.02(2)(b)1 and 310 CMR §10.58(6)(b), respectively. Other than stated in this section, the exceptions provided in the Wetland Protection Act, M.G.L. Chapter 131, Section 40, and Regulations, 310 CMR 10.00, shall not apply under this bylaw.

**IV. Applications for Permits and Requests for Determination** Written application shall be filed with the Commission to perform such activities affecting resource areas protected by this bylaw. The permit 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 issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the permit application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act, M.G. L Chapter 131, Section 40, and Regulations, 310 CMR 10.00.

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing, request a determination from the Commission. Such a Request for Determination of Applicability shall include information and plans as are deemed necessary by the Commission.

Upon receipt of a permit application or Request for Determination of Applicability, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the consultant fee. The specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, including wildlife habitat evaluations, hydrogeologic and drainage analysts, and environmental or land use law.

The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit application or Request for Determination of Applicability filed by a government agency.

The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. The applicant shall pay the fee to be put into a consultant services account of the Commission which may be drawn upon by the Commission for specific consultant services approved by the Commission at one of its public meetings

The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision.

The Commission shall return any unused portion of the consultant fee to the applicant unless the Commission decides at a public meeting that other action is necessary. Any applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.

## **V. Notice and Hearings**

The Commission shall conduct a public hearing on any permit application or Request for Determination of Applicability, with a written notice given at the expense of the applicant, 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 the receipt of a complete permit application or Request for Determination of Applicability unless an extension is authorized in writing by the applicant. Complete permit application shall include but not be limited to all applicable reports listed on the Wetlands Protection Act (WPA) form such as stormwater reports and Massachusetts Endangered Species Act (MESA) notifications.

The Commission shall issue its permit 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, MGL 131, Sect 40, and Regulations, 310 CMR 10.00.

The Commission shall have the authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in VI.

#### **VI. Coordination with Other Boards**

Any person filing a permit application or filing a request for determination of applicability with the Commission may be required to provide a copy thereof at the same time, by certified mail (return receipt requested), hand delivery, or electronic communication to the Board of Selectmen, Planning Board, Board of Health, the Building Inspector, Stormwater Director, Construction Inspector, and Town Engineer. The Commission shall consider any and all comments as they are submitted within the statutory time limits of M.G. L. Chapter 131, Section 40. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action. In no case shall the receipt or lack of receipt of such comments alter the required statutory time frames, unless the applicant has agreed to an extension, in writing.

#### **VII. Permits and Conditions**

If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result therefrom are likely to have a significant individual or cumulative effect upon the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, 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 shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

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 designs specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

The Commission is empowered to require the use of the 1987 Army Corps of Engineers Wetlands Delineation Method, Section F. "Atypical Situations" in some instances where conditions exist that preclude the use of the Massachusetts delineation method using vegetation as a wetlands indicator.

Such instances include but are not limited to disturbed sites, filled wetlands, or naturally occurring events that result in the creation or alteration of wetlands.

To prevent wetlands losses, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require

replication of wetland as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional period of up to three years at the Commission's discretion, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

For good cause the Commission may revoke or modify a permit or determination issued under this bylaw after notice to the holder of the permit or determination, notice to the public, abutters, and town boards, pursuant to V and VI, and a public hearing.

The Commission in an appropriate case may combine the permit or determination issued under this bylaw with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and Regulations, 310 CMR 10.0.

No work in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded.

## **VIII. Regulations**

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the proposes of this bylaw. Failure by the Commission to promulgate such rules and 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 define key terms in this bylaw not inconsistent with the bylaw and procedures governing the amount and filing of fees.

## **IX. Definitions**

The following definitions shall apply in the interpretation and implementation of this bylaw.

The terms "building or structure" shall include any construction activity for which a building permit is required, requires significant excavation, or prevents the free movement of wetland-dependent animal life. Lawn furniture, minimal signage, and temporary children's structures such as sandboxes, swing-sets, and treehouses are not considered "structures" for the purpose of these regulations. Water dependent structures such as docks and piers, and fences that are raised at least 6 inches off the ground, are not subject to the 50-foot No Build Zone. Demarcation markers required by the Dracut Conservation Commission or the Massachusetts Department of Environmental Protection (MassDEP) are also excluded from this definition.

The term "No Build Zone" shall include the area within 50 feet of any bank, fresh water wetland,

beach, flat, marsh, wet meadow, bog, swamp, or lands bordering on any estuary, creek, river, stream, lake, or any land under said waters. In the case of a vernal pool the No Build Zone shall include the associated Vernal Habitat Zone, an area within 100 feet of the high-water mark of any vernal pool.

The term "Commission" shall mean the Conservation Commission of the Town of Dracut.

The term "person" shall include any individual, group or organization, association, partnership, corporation, company, business trust or estate, any federal, state, regional, county or quasi-public corporation or body, including the Town of Dracut, and any other legal entity. The term "Resource Area" shall mean: ANY freshwater wetland, marsh, wet meadow, bog or swamp, whether or not bordering a lake, stream and the land beneath any lake, river, pond or stream; or any land subject to flooding or inundation by groundwater or surface water with a frequency of at least once in one hundred years. The term Resource Area shall include, without limitation, any area in which the vegetational community is predominantly composed of plant species listed as facultative or obligate hydrophytes in Wetland Plants of the State of Massachusetts, 1986, issued by the National & Regional Wetland Plant List Review Panels.

The term "Buffer zone" shall mean any land within 100 feet from the edge of any freshwater wetland, marsh, wet meadow, bog or swamp, whether or not bordering a lake, river, pond or stream, and any land within 100 feet from the top of the bank of any lake, river, pond, or stream.

The term "bank" shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual 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 "vernal pool" shall include a confined basin depression which, at least most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the areas within 100 feet of the mean annual high-water mark of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries.

The term "Vernal Habitat Zone" shall refer to the areas within 100 feet of the mean annual high-water mark of a vernal pool, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries.

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

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- A. Removal, excavation or dredging of soil, sand gravel, or aggregate materials of any kind;
- B. Changing of preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, and/or flood retention characteristics;
- C. Drainage or other disturbance of water levels or water table;
- D. Dumping, discharging or filling with any material which may degrade water quality;

- E. Placing of fill, or removal of material, which would alter elevation;
- F. Driving of piles, erection or repair of buildings, or structures of any kind, except (i) work wholly inside a building and (ii) exterior repair of existing structures or buildings which present no risk of alteration of land, water, or vegetation;
- G. Placing of obstructions or objects in water;
- H. Destruction of plant life, including cutting of trees;
- I. Changing temperature, biochemical oxygen demand, or other physical, biological or chemical characteristics of any waters;
- J. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater, including without limitation, any activity which may cause surface water runoff contaminated with sediments, chemicals, or animal wastes.
- K. Application of pesticides or herbicides;
- L. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

Except as otherwise provided in this bylaw or in regulations of the Commission, the definition of terms in this bylaw shall be set forth in the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and Regulations, 310 CMR 10.00.

## **X. Security**

As 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 mitigation work) 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 the issuance of a Certificate of Compliance for work performed pursuant to the permit.
- B. By 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.

## **XI. 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, its agent, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examination, surveys or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have the authority to enforce this bylaw, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, enforcement orders, non-criminal citations under G.L. Ch. 40 §21D and civil and

criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined or both. Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this Chapter subject to an existing enforcement order or in violation of any permit issued pursuant to this Chapter shall forthwith comply with any such order to restore such land to its condition prior to any violation.

Upon request of the Commission, the Board of Selectmen and Town Counsel shall take legal action for the enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for the enforcement under civil 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, or regulations, permits or enforcement orders issued thereunder, shall be punished by a fine of not more than \$300.00. each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or enforcement orders violated shall constitute a separate offense.

#### **XII. 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 permit application will not have unacceptable significant or cumulative effect upon resource area values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

#### **XIII. Appeals**

A decision of the Commission shall be reviewable in the Superior Court in accordance with M.G.L. Chapter 249, Section 4.

#### **XIV. 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. Chapter 131, Section 40, Regulations, 310 CMR 10.00, thereunder.

#### **XV. Severability**

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

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#### **AMEMDMENTS - CHAPTER 18:**

**Chapter 18 -** Added - Article 25 - Annual Town Meeting, November 8, 1993

**Section VI -** Amended - Article #8 - Annual Town Meeting, November 13, 1995

Amended – Article 28 – Town Meeting June 3, 2024