

Chapter 195

WETLANDS PROTECTION

[HISTORY: Adopted by the Town Council of the Town of Greenfield 8-15-2001, approved by AG 11-23-2001. Amendments noted where applicable.]

§ 195-1. Purpose; applicability of statutes.

- A. This ordinance is intended to utilize the home rule authority of the Town of Greenfield to protect wetland resource areas by prior review and control of activities likely to have a significant or cumulative effect upon jurisdictional areas as outlined in the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, and in this ordinance and provide additional local enforcement measures in conjunction with the Massachusetts Wetlands Protection Act.
- B. Unless otherwise stated in this ordinance, the jurisdiction, exceptions, time period and application procedures, definitions and enforcement standards of the Wetlands Protection Act shall apply.

§ 195-2. Jurisdiction.

- A. Jurisdiction under this ordinance shall be the same as in the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, except as outlined below.
- B. In accordance with the Massachusetts Wetlands Protection Act and based upon local historical experience, the Conservation Commission has determined that the following provisions are necessary to address and clarify issues particular to Greenfield and to protect the interests contained in the Massachusetts Wetlands Protection Act, MGL c. 131, § 40. Each provision is followed by a brief explanation of the intended purpose and intent.
 - (1) For new projects within jurisdiction, a minimum of a 25-foot "No Disturb Zone," to be naturally vegetated, shall be maintained or provided between resource areas and all altered areas. The Commission reserves the authority to create a wider "No Disturb Zone" within the 100-foot buffer zone if deemed necessary to protect the resource area.

This provision serves to ensure protection from negative impacts during construction activities and the long-term viability of a resource area.
 - (2) The following new uses are prohibited within the 100-year floodplain:
 - (a) The outdoor storage of autos, auto parts and associated materials;
 - (b) Solid waste landfills, junkyards, salvage yards, dumps;

- (c) The manufacture, storage, or disposal of hazardous, toxic, or radioactive wastes;
- (d) The temporary or permanent storage or disposal of materials used in snow and ice control including sand, salt or other deicing chemicals;
- (e) The outdoor storage or placement of storage tanks, above or below ground for petroleum products or other hazardous material;
- (f) The storage, dumping, filling, disposal, of earth or other material.

These restrictions serve to protect areas within the floodplain from potential sources of contamination from pollutants. Vehicles and their accessories (road salt, sand, oil, gas) stored in the floodplain will pollute surface water during flooding events, as well as themselves becoming dangerous debris.

- (3) 100% compensatory storage shall be provided for all flood storage volume that will be lost as the result of a proposed project within the 100-year floodplain.

This provision clarifies that the Commission considers all incremental reductions in flood storage capacity to be significant over time, and therefore requires replacement at a 1:1 ratio.

- (4) Wetlands crossings to provide access to otherwise unreachable upland areas may be allowed only if:
 - (a) The only buildable uplands available on the lot have no reasonable alternative means of access from any road, whether publicly or privately owned; and
 - (b) Adjacent property, which would have provided dry access to the uplands, has not been sold off or built on by the current or previous owner; and
 - (c) The crossing is designed to minimize to the greatest extent possible any disruption of the wetland; and
 - (d) The driveway length and design is the minimum length and width necessary to provide access to the proposed use.

This provision clarifies the criteria for determining the appropriateness of proposed wetlands crossing. The Commission may require the applicant to utilize access over an adjacent parcel of land currently or formerly owned by the applicant, or in which the applicant has, or can, obtain an ownership interest; may impose conditions to protect the wetlands; or the Commission may deny a permit for a wetland crossing if the above criteria have not been satisfactorily met.

- (5) The Commission shall not consider replication of wetlands adequate mitigation for the destruction of resource areas. Alteration of wetlands requiring replication shall be permitted only where the landowner will be deprived of substantially all economic use of the property, there are no reasonable alternatives, and the wetland area to be lost is minimized to the greatest extent possible.

The purpose of this provision is to provide clarification that the destruction of natural wetlands shall only be considered as a last resort. In general, the Commission shall not permit replication of wetlands because replication does not in fact substitute for many wetlands values. Proposed wetlands replications are at the discretion of the Commission based upon solid scientific reasoning and shall not be permitted simply based upon a proposed 1:1 replication ratio or the "highest and best use" of a property based upon development potential.

- (6) The issuance of new wetland permits to any property owner or applicant who has any outstanding violations within the Town of Greenfield under this ordinance or the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, shall be delayed until such violation(s) is corrected or remediation is begun to the satisfaction of the Commission.

This provision is intended to ensure the satisfactory resolution of wetland violations prior to new work beginning.

- (7) A request for determination of applicability shall be required prior to the alteration, cutting or removal of any vegetation within 25 feet of a wetland resource area for all purposes except for preexisting uses such as lawn and pastures already regularly mowed. Utility rights-of-way are exempt from this provision as outlined in the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, as are the activities currently exempted from the requirements for the riverfront area under 310 CMR 10:58(6).

This provision is intended to provide clarification that the Commission does not consider existing areas of lawn or pasture to be jurisdictional. However, the enlargement or expansion of lawns or pastures within jurisdictional areas does require a permit from the Commission.

§ 195-3. Application process, notice, hearing and fees.

- A. Procedures under this ordinance are the same as the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, in terms of procedures and forms, with the following exceptions:
- (1) At the discretion of the Commission, the issuance of determinations may be deferred during periods of snow cover or during periods of plant dormancy.
 - (2) The Commission may combine its hearing under this ordinance with the hearing conducted under the State Act.

- (3) The Commission shall have the authority to continue the hearing to a certain day 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 from outside consultants or other Town boards and officials.
 - (4) Upon receipt of a request for determination of applicability or notice of intent application, or at any time during the hearing process, 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, performing or verifying the accuracy of a resource survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis; and researching environmental or land use law. The consultant fee shall be paid by the applicant directly to the hired consultant.
- B. 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 informed decision. An 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 Law.

§ 195-4. Permits, policies and denials.

- A. The Wetlands Protection Act forms, as amended in MGL c. 131, § 40, shall be used for all permits issued under this ordinance.
- B. Additional conditions issued under this ordinance will be attached to the determination of applicability and order of conditions.
- C. When reviewing applications and issuing permits, the Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt and foreseeable future activities. The Commission shall impose conditions that are deemed necessary to protect the interests of the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, and this ordinance.
- D. The Commission shall have the authority to attach conditions to a negative determination issued under the Massachusetts Wetlands Protection Act, specifying how the work will be completed.
 - (1) Work permitted under a negative determination with conditions (WPA Form 2) shall be conducted in compliance with the procedures outlined in the attached

Schedule A, "Standard Conditions for Negative Determination with Conditions", or as amended by the Commission.

- E. Work permitted under an Order of Conditions (WPA Form 5) shall be conducted in compliance with procedures outlined in the attached Schedule B, "Standard Conditions for an Order of Conditions," or as amended by the Commission.
- F. The Commission shall have the right to deny or delay a permit if a previous permit on the same property or on contiguous properties under the same or affiliated ownership has not been complied with or has not received a certificate of compliance.
- G. The Commission is empowered to deny a permit for the following reasons:
- (1) Failure to submit necessary information and plans requested by the Commission;
 - (2) Failure to meet the requirements of this ordinance and the Wetlands Protection Act;
 - (3) Failure to avoid or prevent significant negative or cumulative effects upon wetland resource areas; or
 - (4) Where no conditions are adequate to protect the interests of the Massachusetts Wetlands Protection Act, MGL c. 131, § 40.
- H. **Waiver**
The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation. **Amended – inserted Section H in its entirety by Town Council February 20, 2008.**
- I. **Appeals**
A decision of the Commission under this bylaw shall be reviewable in the superior court in accordance with MGL c. 249,s 4. **Amended – inserted Section I in its entirety by Town Council February 20, 2008.**

§ 195-5. Definitions.

Except as otherwise provided in this ordinance or in regulations of the Commission, the definitions of terms in this ordinance are the same as those set forth in the Wetlands Protection Act.

§ 195-6. Security.

As part of a permit issued under this ordinance, 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 there under be secured wholly or in part by one or more of the methods described below:

- A. By a commercial 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; or
- 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 the 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; or
- C. By recording a determination of applicability or an order of conditions in the Registry of Deeds.

§ 195-7. Violations and penalties; enforcement.

- A. Activities which remove, fill, dredge, build upon or otherwise alter resource areas protected by this ordinance, 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 enforcement order issued pursuant to this ordinance shall constitute a violation.
- B. The Commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this ordinance and may or cause to be made such examinations, surveys or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth of Massachusetts.
- C. The Commission shall have the authority to enforce this ordinance, its regulations, and permits issued there under by violation notices, administrative orders, and civil and criminal court actions. In the alternative to criminal prosecution, the Commission may utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D, in accordance with the Town Ordinances. The fine for any violation disposed of through this procedure shall be in accordance with Subsection F of the procedures for violations as outlined below. This fine may be in addition to any levied under the Wetlands Protection Act.
- D. When a violation is believed to have occurred, the following procedures for violations shall be followed:

- (1) Contact the property owner to:
 - (a) Request oral permission from the property owner to conduct a site visit; or
 - (b) If the property owner cannot be contacted or refuses entry onto the property, verify violation from a public way or a cooperative neighboring property; or
 - (c) Obtain the necessary court order to allow entry onto the property and send a certified letter to the property owner's mailing address according to the most recent Tax Assessor information notifying property owner of a scheduled site visit.
 - (2) Conduct a site visit. Determine if a violation has occurred and the extent of the violation.
 - (3) Based upon the severity of the violation, issue a cease and desist order and require any of the following remedies:
 - (a) Stoppage of work and soil erosion control measures if necessary;
 - (b) Owner to attend a scheduled Commission meeting to present a "mitigation plan";
 - (c) Filing of a request for determination of applicability;
 - (d) Filing of a notice of intent.
- E. If the property owner does not comply with the cease and desist order or order of conditions in a timely manner the Commission shall issue an enforcement order as per MGL c. 131, § 40.
- F. If the property owner fails to comply with the enforcement order by the specified date, a maximum of a \$100 a day fine shall be levied under the Noncriminal Disposition Act. The property owner shall be notified of the fine by certified mail or served by the enforcing person(s) who shall be the Conservation Commission, any of its designees or any police officer.
- G. If the property owner fails to comply with the enforcement order within 30 days, the Conservation Commission will record the enforcement order and notice of fine in the Registry of Deeds and shall notify the property owner by return receipt, certified mail.

§ 195-8. Burden of proof.

The applicant requesting a permit under this ordinance shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have a significant negative or cumulative effect upon the wetland resource areas protected by this

ordinance. 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.

§ 195-9. Severability.

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

