

CHAPTER F

ENVIRONMENTAL PROTECTION

WETLAND PROTECTION

Section F1 Purpose

The purpose of this Bylaw is to protect the wetlands, vernal pools, adjoining buffer zones, banks, lands subject to flooding and riverfront areas (collectively, "the resource areas") of the Town of Acton by controlling activities deemed to have a significant impact upon wetland interests. Said wetland interests include (but are not limited to) the following: public or private water supply, groundwater, flood control, erosion control, storm damage prevention, water pollution prevention, fisheries, protection of endangered or threatened species, and wildlife habitat (collectively, the interests protected by this Bylaw.) The Town of Acton Wetlands Map shows the approximate location of most of the Town's wetlands and shall be used as a guide to wetland location.

Section F2 Provisions

No person shall remove, dredge, fill or alter any resource area except as provided in Section 4, without first filing a Determination of Applicability, or a written Notice of Intent under this Bylaw, and obtaining and complying with the terms of said Determination or with an Order of Conditions.

Section F3.1 Definitions

The term "person" as used in this Bylaw shall include any individual, group of individuals, association, partnership, corporation, or business organization, trust or estate, the Commonwealth, or any political subdivision thereof, administrative agency, public or quasipublic corporation or body, or any other legal entity or its legal representatives, agents or assigns.

Section F3.2

The term "abutter" as used in this Bylaw shall include all property owners, determined by the most recent maps in the Assessors Office, that abut the land on which the proposed activity is to take place and such other persons as the Commission may determine.

Section F3.3

The term "activity" shall mean any form of draining, dumping, dredging, damming, discharging, excavating, filling or grading; any form of construction, reconstruction, or expansion of any building, structure, road or other way; or alteration or any changing of the physical, chemical, or biological characteristics of an area of land or water.

Section F3.4

The term "alter" as used in this Bylaw shall include, without limitation, the following actions when undertaken in areas subject to this Bylaw:

- (a) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (b) Changing of drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns and 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) Driving of piles, erection of buildings or structures of any kind;
- (f) Placing of obstructions whether or not they interfere with the flow of water;

- (g) Destruction of plant life, including the cutting of trees, which may significantly impact the interests protected by this Bylaw;
- (h) Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water;

Section F3.5

"Buffer zone" shall mean that area of uplands within 100 feet horizontally outward from the boundary of a wetland, vernal pool (except as provided for in Section 3.14), bank, or land subject to flooding. (Note: there is no buffer zone associated with the riverfront area.)

Section F3.6

"Certificate of Compliance" shall mean a written determination by the Commission verifying that work has been completed in accordance with an Order of Conditions.

Section F3.7

"Commission" shall mean the Acton Conservation Commission, that body of members lawfully appointed pursuant to M.G.L. Chapter 40, Section 8c, for the purposes of administering and enforcing the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and the Town of Acton Wetland Protection Bylaw.

Section F3.8

"Determination Of Applicability" shall mean any review and written finding by the Conservation Commission as to whether a site or the work proposed thereon is subject to the jurisdiction of the Bylaw. See also Section F5 of the Bylaw.

Section F3.9

"Dredge" shall mean to clean, deepen, widen or excavate, either temporarily or permanently.

Section F3.10

"Extension Permit" shall mean a written extension of time granted by the Conservation Commission once for a period of up to 3 (three) years, within which time authorized work shall be completed.

Section F3.11

"Fill" shall mean either of the following, whichever is applicable:

- (a) to deposit or place any material so as to raise in elevation, either temporarily or permanently;
- (b) anything that fills or is used to fill - especially earth or gravel used for filling a hole, depression or low area.

Section F3.12

"Notice of Intent" shall be a written notice filed by any person intending to alter, or in any way change, the physical or chemical properties of land subject to protection under the Bylaw.

Section F3.13

"Order of Conditions" shall mean the document issued by the Conservation Commission or the courts containing conditions which regulate or prohibit any activity subject to the Bylaw, which is to be recorded in the Registry of Deeds or Land Court.

Section F3.14

The term "vernal pool" as used by this Bylaw shall include, in addition to that already defined under the Massachusetts Wetlands Protection Act and regulations (310 CMR 10.00), any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or

driveways that meets the certification criteria established in the Guidelines for Certification of Vernal Pool Habitat published by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The buffer zone for vernal pools shall extend 100 horizontal feet from the mean annual high-water line defining the depression.

Section F3.15

The term “wetland” as used in this Bylaw includes:

- 1) Vegetated wetlands are wet meadows, marshes, swamps and bogs where 50% or more of the vegetative community consists of wetland indicator plants as defined in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, s. 40) and regulations at 310 CMR 10.00. When vegetation is not sufficient to determine the boundary of a wetland, characteristics of hydric soils or observations of flowing water, standing water or saturated soils may be used.
- 2) Any non-vegetated area such as a creek, brook, stream, river, pond, lake, lands under said waters, and certified and uncertified vernal pools as defined in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, s. 40) and regulations at 310 CMR 10.00 and Section F3.14 of this Bylaw.

Section F3.16

“Bank” is the portion of the land surface that normally abuts and confines a water body such as a creek, brook, stream, river, pond or lake as defined in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, s. 40) and regulations at 310 CMR 10.00. A bank may be partially or totally vegetated, or comprised of exposed soil, gravel or stone.

Section F3.17

“Lands subject to flooding” are areas of temporary or occasional flooding as defined in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, s. 40) and regulations at 310 CMR 10.00. Bordering land subject to flooding is the estimated maximum lateral extent of floodwater that will theoretically result from the statistical 100-year frequency storm. Isolated land subject to flooding is an isolated depression or closed basin without an inlet or an outlet. It is an area that at least once a year confines standing water to a volume of at least ¼ acre-feet and to an average depth of at least six inches. Some isolated lands subject to flooding may be vernal pools.

Section F3.18

The term “resource area” shall mean any area subject to protection under this bylaw and include any bank, wetland, vernal pool, buffer zone, lands subject to flooding or riverfront area.

Section F3.19

The “Riverfront Area” is the area of land between a river’s mean annual high water line and a parallel line measured horizontally 200 feet away. The riverfront area may include or overlap other resource areas or their buffer zones. A river is a flowing body of water that empties to any ocean, lake, pond or river and which flows throughout the year (except during drought conditions). Perennial streams are rivers; intermittent streams are not rivers. Determination of flow status shall be based on: field observations (witnessed by Conservation Commission or its authorized agent); USGS or other government maps; size of channel or bank; watershed size; stream order; streambed characteristics; local geology; biological community; and/or other appropriate evidence.

Section F4.1 Exemptions

No Notice of Intent hereunder need be filed in connection with an emergency project necessary for the protection of health or safety of the citizens of Acton to be performed or ordered to be performed by an administrative agency of the Commonwealth or by the Town. An

emergency project shall mean any project certified to be an emergency by the Town of Acton Conservation Commission or its agents within 24 hours. In no case shall any removal, dredging, filling or altering commence prior to such emergency certification nor extend beyond the time necessary to abate the emergency.

Section F4.2

No Notice of Intent hereunder need be filed in connection with 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, or telecommunication services.

Section F4.3

No Notice of Intent need be filed in connection with normally accepted maintenance procedures on land in agricultural use. The term "land in agricultural use" shall mean any qualifying wetland within a farm which is qualified or eligible to be qualified under the Farmland Assessment Act, Massachusetts General Laws, Ch. 61A ss. 1 & 2. Any proposed changes to land in agricultural use which may have a significant impact on any of the interests protected by this Bylaw must be submitted to the Conservation Commission for a Determination of Applicability.

Section F4.4 Septic Systems Meeting State Title V

No Notice of Intent need be filed for the replacement, repair, or installation of a residential septic system that meets the requirements of Title V of the State Environmental Code (310 CMR 15.00), that has received a permit from the Acton Board of Health, and that meets the setback requirements of this Bylaw. Any such septic system replacement, repair, or installation that may have a significant impact on any of the interests protected by this Bylaw must be submitted to the Conservation Commission for a Determination of Applicability.

Section F4.5 Limited Projects

Notwithstanding the other provisions of this Bylaw, the Commission may issue an Order of Conditions for limited projects listed under Section 10.53(3) of the Wetland Protection regulations promulgated under the Massachusetts Wetland Protection Act (310 CMR 10.53(3)).

Section F4.6 Waivers

Strict compliance with this Bylaw may be waived when, in the judgment of the Conservation Commission, such action is in the public interest and is consistent with the intent and purpose of the Bylaw. Any request for a waiver must be submitted to the Commission in writing. The waiver shall be presented at the time of filing along with a written justification stating why a waiver is desired or needed, is in the public benefit, and is consistent with the intent and purpose of the Bylaw.

Section F5 Determination of Applicability

Any person may request the Conservation Commission to make a determination as to whether or not a proposed project in the wetland or "buffer zone" is significant to the interests protected by the Bylaw. This request for a Determination of Applicability shall be sent by certified mail, or hand delivered to the Acton Conservation Commission or its authorized representative. A person delivering this request by hand shall be given a dated receipt. The Commission shall make such a determination within 21 days of the receipt of said request, and it shall notify the applicant by certified mail, of the results of the determination. If the Conservation Commission determines that the subject area is significant to the interests protected by this Bylaw, and said interests are not fully protected by the project as proposed, the Commission will require the applicant to file a Notice of Intent, or will attach such Orders of Conditions to ensure protection of the interests of this Bylaw. The Commission, or its agents, may, for the purpose of carrying out its duties under this Bylaw, request such plans or

information as may be necessary for its evaluation, may enter upon the subject land, and may make or require to be made such examination or survey as it deems necessary.

Section F5.1 Abbreviated Notice of Resource Area Delineation

Any person may request the Conservation Commission to make a determination as to the precise boundaries of a resource area, including the buffer zone. This request for Resource Area Delineation shall be sent by certified mail, or hand delivered to the Acton Conservation Commission or its authorized representative. A person delivering this request by hand shall be given a dated receipt. Prior to issuing a Resource Delineation, the Conservation Commission shall hold a public hearing within 21 days of the filing. Notice of the time and place of such hearing shall be given by the Conservation Commission not less than five days prior to the public hearing, by publication in a newspaper of general circulation in the Town and by mailing a notice to the applicant, the Board of Health and the Planning Board. Such hearing may be held at the same time and place as any public hearing required to be held under M.G.L. Ch. 131, s. 40. If the Commission determines that additional data or information is necessary, the hearing may be continued to a future date time certain, agreeable to both the Applicant and the Commission, and shall be posted not less than five (5) days prior to said continuation. The Resource Area Delineation shall be issued within 30 days after the public hearing and may be identical to any such delineation issued under the provisions of the Massachusetts Wetlands Protection Act (M.G. L. Ch. 131, s. 40).

Section F6.1 Filing Procedure for a Notice of Intent

The Notice of Intent shall be sent by certified mail, or hand delivered to the Acton Conservation Commission or its authorized representative, and shall include plans and specifications as required of an applicant by the Commission. A person delivering this Notice by hand shall be given a dated receipt. This Notice shall also include a filing fee to be designated in the rules and regulations of the Commission payable to the Town of Acton. No filing fee is required when the Town of Acton files an application. These plans shall also show the location of the wetland boundaries and shall be at a scale of 1" = 40' or any such scale that adequately depicts the area. The applicant shall also notify the clerk of the Town of Acton by hand delivery or certified mail, that such plans have been submitted to the Conservation Commission. Provided that the Notice of Intent fulfills the requirements of this Bylaw and M.G.L. Ch. 131, s. 40, only one Notice of Intent need be submitted.

Section F6.2 Notification of Filing

Any person filing a Notice of Intent under this Bylaw shall also notify by certified mail all abutters and the owner of the subject property, if different from the applicant, of the filing of such Notice of Intent. Such Notice shall clearly identify the land on which the work is to be done and describe the general nature of the work. Notice shall include the date, place, and time of said public hearing, and where plans may be reviewed. A list of persons so notified and proof of such notification shall be filed with the Conservation Commission prior to the Public Hearing.

Section F6.3 Extension Permits

The Commission may extend an Order of Conditions once for a period of up to three years. Written requests for an Extension Permit shall be made not less than thirty calendar days prior to the expiration of said Order of Conditions.

The Commission may deny an Extension Permit under any of the following circumstances:

- (1) Where no activity has begun on the project, except where such failure is due to unavoidable delay such as appeals in obtaining other necessary permits.
- (2) Where new information not available at the time of the original permit filing has become available and indicates that the Order of Conditions is insufficient to protect the areas subject to protection.

- (3) Where activity is causing damage to areas subject to protection.
- (4) Where there has been activity in violation of the Order of Conditions.
- (5) Where an Extension Permit has been previously granted for the Order of Conditions.

Section F7.1 Public Hearing

Prior to issuing any Order of Conditions (Section 8.2) the Conservation Commission shall hold a public hearing within 21 days of the filing of said Notice of Intent. Notice of the time and place of such hearing shall be given by the Conservation Commission not less than five days prior to the public hearing, by publication in a newspaper of general circulation in the Town and by mailing a notice to the applicant, the Board of Health and the Planning Board. Such hearing may be held at the same time and place as any public hearing required to be held under M.G.L. Ch. 131, s. 40. If the Commission determines that additional data or information is necessary, the hearing may be continued to a future date time certain, agreeable to both the Applicant and the Commission, and shall be posted not less than five (5) days prior to said continuation.

Section F7.2 Failure to Act

If the Conservation Commission has failed to hold a public hearing within the 21 day period as required, or if after holding such a hearing, has failed within 21 days from the date of the close of the public hearing to issue an Order of Conditions, an appeal may be made to the Board of Selectmen, who within ten days, shall instruct the Commission to act within a period not to exceed ten days. If, after this ten day period, no action has been taken by the Conservation Commission, the application shall be considered approved.

Section F8.1 Burden of Proof

The applicant shall bear the burden of proving that the work proposed in the application will not harm the interests protected by this Bylaw. Failure to provide adequate evidence to the Commission that the proposed work will not harm any of the interests protected by this Bylaw shall be sufficient cause for the Commission to deny the application or to grant a permit with an Order of Conditions, or, at the Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence.

Section F8.2 Order of Conditions

The Conservation Commission may impose such conditions on any proposed removing, dredging, filling or altering as it deems necessary to protect and preserve the interests covered by this Bylaw. In preparing the Order of Conditions the Commission shall take into account the cumulative adverse effects of loss, degradation, isolation and replication of protected resource areas throughout the municipality, resulting from past activities, permitted and exempt, and foreseeable future activities. Such Order of Conditions shall be in writing and may be subject to the same constraints and be identical to any such order issued by the Acton Conservation Commission under the provisions of M.G.L. Ch. 131, s.40, or successor statutes, and shall be issued within 30 days after the public hearing. Such Order of Conditions will expire three years from the date of issuance, unless renewed prior to expiration. No proposed work governed by an Order of Conditions shall be undertaken until all permits, approvals, and variances required by local Bylaws have been obtained and all applicable appeal periods have expired. The final Order of Conditions issued under this Bylaw shall be recorded with the Registry of Deeds for the district in which the land is located. However, if said Order is identical to the final Order of Conditions issued under the provisions of M.G.L. Ch. 131, s.40, only one Order of Conditions need be recorded. The Conservation Commission shall have the right to file the Order of Conditions with the Registry of Deeds should the applicant fail to do so within 60 days. If a wetland replication is required, the applicant will adhere to replication procedures established by the Commission or as set down in the Commission's Rules and Regulations.

Section F8.3 Setbacks for Activities

The following are the minimum distances (setbacks) of activity from the edge of wetlands or vernal pools. No activity shall be allowed within these setbacks except as provided below. These setbacks are the minimum and may be extended further if deemed necessary for the protection of the interests of the Bylaw by the Commission.

The setbacks shall be as follows:

- (1) 0-foot setback for wetland-dependent structures (drain outfalls, weirs, etc.), fences, and structures necessary for upland access where reasonable alternative access is unavailable.
- (2) 50-foot buffer of undisturbed natural vegetation.
- (3) 75-foot setback to the edge of driveways, roadways, and structures.
- (4) 50-foot chemical-free area within which no pesticides, herbicides, or fertilizers shall be used.
- (5) 100-foot setback for underground storage of gasoline, oil, or other fuels and hazardous materials.
- (6) 100-foot setback from the mean high water line of vernal pools.

When in the opinion of the Commission compliance with these setbacks will result in greater harm to the interests of this Bylaw than would waiver of the setbacks, the Commission is permitted to grant such waivers.

Pre-existing activities or structures not meeting the setbacks set forth above need not be discontinued or removed [but shall be deemed to be nonconforming]. No new activity shall be commenced and no new structure shall be located closer to the edge of wetlands or vernal pools than existing non-conforming like activities or structures, but the Commission may permit new activity or structures as close to the edge of wetlands or vernal pools if it finds that such activity or structure will not affect the interests protected by the Bylaw no more adversely than the existing activity or structure.

Section F8.4 Erosion and Sedimentation Control

Where activities are proposed within the buffer zone, erosion and sedimentation barriers and other erosion controls as necessary shall be installed between the area of activity and the wetlands or vernal pool to prevent the transport of sediment into wetlands or vernal pools. Similarly, erosion and sedimentation controls shall be installed when activities outside the buffer zone create a significant potential for transport of sediment into wetlands or vernal pools.

Section F8.5 Storage of Fill or Materials

If any fill is to be stored on site, it shall be stored outside of the buffer zone and/or it shall be surrounded by staked haybales to prevent erosion and sedimentation.

There shall be no storage, disposal or burial of construction debris (for example, scrap lumber, metals, concrete, asphalt, piping, logs, stumps, etc.) within the buffer zone without the express permission of the Commission in an Order of Conditions.

Section F9.1 Wetlands Replacement

Wetlands or vernal pools that are altered shall in all instances be replaced by replacement wetlands of similar character. Replacement wetlands shall include, at minimum, equal area as the altered wetlands or vernal pool in a hydrologically connected location to the unaltered remainder of the wetlands or vernal pool.

Section F9.2 Requirements for Wetlands Replacement

Projects involving the filling and/or permanent alteration of wetlands or vernal pools shall meet the following requirements:

- (1) The proposed replacement area design must be submitted to the Commission for approval as part of the Notice of Intent.
- (2) The replacement area must be shown to duplicate sufficiently the functions of the wetland proposed to be altered.
- (3) The replacement area shall be constructed, to the extent possible, immediately after alteration of the existing wetland and during the same growing season.
- (4) If after three growing seasons, the Commission determines that the replacement area has not satisfactorily developed into a wetland or vernal pool, the applicant or owner may be required to submit new plans to successfully replicate the original altered wetland. No Certificate of Compliance shall be issued until the Commission has determined that a satisfactory replacement area has been completed.

Section F10 Denial

The Conservation 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 design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulatively adverse effects upon the wetland values protected by this bylaw; or where the Commission deems that 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.

Section F11 Prior Violation

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of any order pursuant to this Bylaw, shall forthwith comply with any such order, or restore such real estate to its condition prior to any such violation; provided however that no such action, civil or criminal shall be brought against such person unless commenced within three years following the date of acquisition of the real estate by such person.

Section F12 Bond

The Conservation Commission may require the posting of a bond with surety, running to the Town of Acton, and sufficient as to form and surety in the opinion of the Town Counsel, to secure the faithful and satisfactory performance of work required by any final Order of Conditions, in such sum and upon such conditions as the Commission may require. Other evidence of financial responsibility which is satisfactory to the Commission may be accepted in lieu of a bond. Notwithstanding the above, the amount of such bond shall not exceed either the estimated cost of the work required by the final Order of Conditions, or the estimated cost of the work required for the restoration of affected lands and properties if the work is not performed as required, whichever is greater.

Section F13 Rules and Regulations

After due notice and public hearing, the Commission may promulgate procedural rules and regulations to effectuate the purposes of this bylaw. However, failure 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.

Section F14 Enforcement

Any person who violates any provision of this bylaw or of any condition of a permit issued pursuant to it may be subject to a fine of not more than \$300. Each day during which a violation continues may constitute a separate violation. This bylaw may be enforced pursuant to Mass. General Laws Chapter 40, Section 21D, by the Constable, Police Chief, Police Officer, Conservation Administrator, or other agent allowed by law. Upon request of the Commission, the Board of Selectmen or Town Counsel may take such other legal action as may be necessary to enforce this bylaw and permits pursuant to it.

The following provides a schedule of fines for specific violations:

- Alteration of a wetland or vernal pool without an Order of Conditions issued pursuant to this Bylaw - \$300
- Work within the buffer zone without prior submittal of Request for Determination or Notice of Intent - \$200
- Failure to provide sedimentation controls required by an Order of Conditions - \$200
- Disposal of construction debris within the buffer zone - \$300
- Failure to construct stormwater or drainage structure according to plans - \$300
- Removal of trees designated for protection - \$10 per inch of circumference
- Storage of fill within the buffer zone - \$150.

Section F15 Appeals

A decision of the Commission may be reviewed by the Superior Court in an action filed within 60 days thereof, in accordance with Massachusetts General Law 249, Section 4.

Section F16 Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

Annual Town Meeting Voted to Approve: April 8, 2003

Effective Date: July 8, 2003

[ahm.concom.currentbylaw.THE BYLAW July 8, 2003 amended 4/03 atm](#)