

Chapter 194

WETLANDS AND WATER RESOURCES PROTECTION

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[HISTORY: Adopted by the Annual Town Meeting of the Town of Wayland 5-1-2002 by Art. 27. Amendments noted where applicable.]

GENERAL REFERENCES

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| Boats and boating — See Ch. 101. | Zoning — See Ch. 198. |
| Dudley Pond — See Ch. 109. | Aquifer Protection District — See Ch. 300. |
| Hunting and trapping — See Ch. 120. | Conservation cluster development — See Ch. 301. |
| Pesticides — See Ch. 143. | Site plan review and approval — See Ch. 302. |
| Trees — See Ch. 171. | Subdivision of land — See Ch. 303. |

§ 194-1. Purpose.

The purpose of this chapter is to provide a greater degree of protection of wetlands, buffer zones, and related water resources, than the protection of these resource areas provided under MGL c. 131, § 40, and the Wetlands Regulations promulgated thereunder by the Massachusetts Department of Environmental Protection. This greater degree of protection shall be by pre-construction review and control of activities deemed by the Conservation Commission likely to alter, degrade, or have an adverse cumulative effect upon wetland values and functions, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, stormwater quality, water quality, fisheries, unusual plants, wildlife, wildlife habitat, passive recreation and aquaculture values (collectively, the “wetland values protected by this chapter”).

§ 194-2. Definitions.

A. The following definitions shall apply in the interpretation and implementation of this chapter:

ALTER — Includes, but is not limited to, one or more of the following actions upon areas described in this chapter:

- (1) The removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind;
- (2) The changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood storage retention areas;
- (3) The drainage or disturbance of the water level or water table, the dumping, discharging or filling with any material or drainage which could degrade the water quality;
- (4) The driving of piles, erection of buildings or structures of any kind;
- (5) The placing of obstructions, including docks and piers, whether or not they interfere with the flow of water;
- (6) The destruction of plant life, including the cutting of trees;
- (7) The changing of water temperature, biochemical oxygen demand and other natural characteristics of the receiving water;
- (8) Any activity, change or work which pollutes or degrades the quality of any stream, body of water, wetland, buffer zone, or water resource area whether located in or out of the Town of Wayland;
- (9) The flowage of water, piped or otherwise channelized, through irrigation or other unnatural means into or onto any wetlands, buffer zones, and related water resources.

APPLICANT — Any person who files a determination of applicability (RDA) as to whether this chapter applies to any area or work thereon or any person who files a notice of intent (NOI) to do work within such area to build, remove, fill, dredge, discharge into, or alter a wetlands, buffer zone and/or related water resource.

BANKS — Land adjoining any body of water which serves to confine said water, 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.

BOG — An area where standing or slowly running water is near or at the surface during a normal growing season and where a vegetational community has a significant portion of the ground or water surface covered with sphagnum moss and where the vegetational community is made up of a significant portion of one or more of, but not limited to nor necessarily including all of, the following plants or groups of plants: aster, azaleas, black spruce, larch, laurels, leatherleaf, orchids, pitcher plants, sedges, sundews, sweet gale, or white cedar.

BUFFER ZONE — Unless otherwise specified herein, any land whichever is the greater distance of the following:

- (1) One hundred feet horizontally lateral from the edge of any bog, marsh, wet meadow, swamp, pond, vernal pool, bank, streambed, lake, stream or any other resource area specified in this chapter; or
- (2) One hundred feet horizontally lateral from the water elevation of the one-hundred-year storm, or land subject to flooding or inundation.

BYLAW — Chapter 194 of the Code of the Town of Wayland.

LAND SUBJECT TO FLOODING OR INUNDATION — A protected water resource, except as noted in the definition of “stream,” means an area of depression in topography, isolated depression, low lying land, or closed basin which floods periodically and/or serves as a ponding area of ground or surface water. This area may also border a freshwater vegetated wetlands as a result of a hydrologic connection with a freshwater wetlands, marsh, bog, wet meadow, swamp, creek, river, stream, pond, or lake or other water body during any storm event up to and including the one-hundred-year storm event.

- (1) Such area shall be 500 square feet or greater in surface area and may include vernal pools.
- (2) Land subject to flooding or inundation shall include the area shown on the Federal Emergency Management Agency Flood Profile, Town of Wayland one-hundred-year flood elevation, as most recently amended.
- (3) This area may be characterized by evidence of standing or ponding water during any storm event (up to and including the one-hundred-year storm event based upon a twenty-four-hour seven-inch rainfall), hydrophilic vegetation (wetland indicator plants), and/or hydric soils. The lateral extent of flooding may be determined by: the most recent Federal Management Flood Profile one-hundred-year flood elevation for the Town of Wayland, the elevation that is reached by the amount of water from a one-hundred-year storm event determined either by visual observation, or by calculation using the Soil Conservation Service hydrologic model TR-20 computer program (Computer Program for Project Formulation – Hydrology, Soil Conservation Service Technical Release 20, Washington, D.C., 1983) for a twenty-four-hour, seven-inch rainfall event.

MARSH — An area where a vegetational community exists in standing or running water during the growing season and where at least 50% of the vegetational community is composed of, but not limited to nor necessarily including all of, the following plants or groups of plants: arums, bladderworts, bur-reeds, buttonbush, cattails, duckweeds, eelgrass, frog bits, horsetails, hydrophilic grasses, leatherleaf, pickerel weeds, pipeworts, pond weeds, rushes, sedges, smartweeds, sweet gale, water milfoil, water lilies, water starworts or water willow.

PERSON — Includes any individual, group of individuals, associations, partnerships, corporations, business organizations, trust, estate, Commonwealth of Massachusetts when subject to Town bylaws; any public or quasi-public corporation or body when subject to town bylaws; any other legal entity, including the Town of Wayland or its legal representatives, agents or assigns.

POND — Any open body of freshwater, either naturally occurring or manmade by impoundment, with a surface area observed or recorded within the last 10 years of at least 10,000 square feet and which is never without standing water due to natural causes, except during periods of extended drought. For purposes of this definition, “extended drought” shall mean any period of four or more months during which the average rainfall for each month is 50% or less of the ten-year average for that same month. Basins or lagoons,

which are part of wastewater treatment plants, shall not be considered "ponds," nor shall swimming pools or other impervious man-made retention basins.

RIVERFRONT AREA — That area of land situated between a perennial stream's mean annual high-water line and a parallel line located a maximum of 200 feet away, measured outward horizontally from the stream's mean annual high-water line. The Commission may, after a public hearing, designate a riverfront area of less than 200 feet for a densely developed area. This definition shall not create a buffer zone, so-called, beyond such riverfront area. The riverfront area shall not apply to any mosquito control work for the improvement of low lands and swamps and the eradication of mosquitoes under MGL c. 252.

STREAM — A body of running water, and the land under the water, including brooks, creeks, and man-made watercourses, which moves in a definite channel in the ground due to hydraulic gradient in a definable path. A portion of a stream may flow through a culvert, pipe, or beneath a bridge. A stream may be intermittent (i.e., does not flow throughout the year).

SWAMPS — An area where groundwater is at or near the surface of the ground for not less than two consecutive weeks of the growing season or where runoff water from surface drainage frequently collects above the soil surface and where at least 50% of the vegetational community is made up of, but is not limited to nor necessarily includes all of, the following plants or groups of plants: alders, ashes, azaleas, black alder, black spruce, buttonbush, American or white elm, highbush blueberry, larch, cowslip, poison sumac, red maple, skunk cabbage, sphagnum mosses, spicebush, black gum tupelo, sweet pepperbush, white cedar or willow.

VERNAL POOL — Includes, in addition to any vernal pool certified by the Massachusetts Division of Wildlife and Fisheries Natural Heritage and Endangered Species Program, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways, which normally 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 amphibian, reptile, or other vernal pool community species.

WETLAND — Wet meadows, marshes, swamps, bogs, and other areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a hydrophilic plant community, or emergent and submergent plant communities in inland waters.

WET MEADOW — An area where groundwater is at or near the surface of the ground for not less than two consecutive weeks of the growing season or where runoff water from surface drainage frequently collects above the soil surface and where at least 50% of the vegetational community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all of, the following plants or groups of plants: blue flag, vervain, thoroughwort, dock, false loosestrife, hydrophilic grasses, loosestrife, marsh fern, sensitive fern or smartweed.

- B. The Conservation Commission may, in its rules and regulations, provide such other definitions or terms used in this chapter not inconsistent therewith, as it deems useful in order to carry out its obligations under this chapter.

§ 194-3. Procedure.

- A. No person shall remove, fill, dredge, build upon, discharge onto or otherwise or alter any bank, freshwater wetland, marsh, bog, wet meadow, swamp, vernal pool, creek, river, stream, pond or lake or any land under said waters, or any buffer zone, or any land subject to flooding or inundation, or riverfront area other than in the course of 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 and used to provide electric, gas, water, telephone, telegraph and other telecommunication services without first filing either a request for a determination (RDA) of applicability or a notice of intent (NOI) to so remove, fill, dredge, build upon, discharge, or otherwise alter, including such plans as may be necessary to fully describe such proposed activity and its effect on the environment and without receiving and complying with a permit issued by the Conservation Commission. Said applications shall be made in conjunction with any required filings under MGL c. 131, § 40. Said request for determination of applicability or notice of intent shall be sent by certified mail or hand delivered to the Conservation Commission. Each such notice or determination shall be accompanied by a filing fee to be established by the Conservation Commission in accordance with a fee schedule adopted by the Conservation Commission pursuant to MGL c. 40, § 22F, payable to the Town of Wayland.
- B. Copies of a request for determination of applicability or a notice of intent shall be sent at the same time, by certified mail or by hand delivery, to the Board of Health. Such determination of applicability or notice of intent may be sent before any or all permits, variances and approvals required by the Zoning Bylaw¹ or by the Subdivision Control Law² and the regulations of the Planning Board hereunder have been obtained; however the filing shall note if such permits, variance and approvals are required.
- C. Upon receipt from any person of a request for determination of applicability, the Conservation Commission shall within 30 days make a written determination as to whether this chapter is applicable to any land or work thereon. This determination shall be made after a public meeting to consider the request for a determination of applicability. Notice of the date, time, and place of said meeting shall be given by the Conservation Commission at the expense of the applicant, not less than seven days prior to such hearing by publication in a newspaper of general circulation in Wayland, and by delivering or mailing a notice thereof to the applicant, Board of Health, the Town Surveyor, Road Commissioners, Surface Water Quality Committee, Building Commissioner, Planning Board, to abutters of the land (property owners within 100 feet of the activity/parcel, as determined by the most recent Assessors' records) on which the proposed activity is to take place and to such other persons as the Conservation Commission may determine. Where such person is other than the owner, notice of any such determination and notice of the Commission's decision, shall

¹ Editor's Note: See Ch. 198, Zoning.

² Editor's Note: See Ch. 303, Subdivision of Land.

be sent to the owner, abutters, Building Commissioner, and to the person making such request.

§ 194-4. Public hearing.

The Conservation Commission shall hold a public hearing on the proposed activity within 30 days of the receipt of said notice of intent. Notice of the date, time, and place of said hearing shall be given by the Conservation Commission at the expense of the applicant, not less than seven days prior to such hearing by publication in a newspaper of general circulation in Wayland, and by delivering or mailing a notice thereof to the applicant, Board of Health, the Town Surveyor, Road Commissioners, Building Commissioner, Surface Water Quality Committee, Planning Board, to abutters of the land (as determined by the most recent Assessors' records) on which the proposed activity is to take place and to such other persons as the Conservation Commission may determine. The Conservation Commission, the Town Surveyor, the Planning Board, their agents, officers and employees may enter upon privately owned land without liability of any kind for the purpose of performing their duties under this section.

- A. If, after said hearing, the Conservation Commission determines that the wetland, related water resource area, vernal pool, pond, or buffer zone on which the proposed work is to be done is likely to be significant to the protection of the values and functions of the wetlands, related water resource area, and buffer zone by impacting the public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, stormwater quality, water quality, fisheries, shellfish, unusual plants, wildlife, wildlife habitat, passive recreation and aquaculture values the Commission shall, by written order, within 21 days or such time as the Commission and the applicant agree on, impose such conditions as are reasonably necessary for the protection of the interests described herein, and all work shall be done in accordance therewith. Said order shall be known as a "wetlands and water resources permit" and may be issued in conjunction with an order of conditions issued pursuant to MGL c. 131, § 40. The conditions may include a condition that certain land or portions thereof not be built upon or altered, filled or dredged; that streams not be diverted, dammed or otherwise disturbed.
- B. If the Conservation Commission makes a decision that the proposed activity does not require the imposition of such conditions, the applicant and all others who have received notice of such hearing by mail shall be notified of such decision within 21 days after said hearing.
- C. The Conservation Commission shall not impose additional or more stringent conditions as a result of any hearing conducted by it pursuant to MGL c. 131, § 40 than it has imposed pursuant to the provisions of this chapter nor shall it require from an applicant who filed a notice of intention pursuant to MGL c. 131, § 40 additional materials or data than is required of him/her pursuant to the application filed under this chapter.
- D. Wetlands and water resources permits shall expire three years from the date of issuance. An applicant may apply for an extension at least 30 calendar days prior to the expiration of the permit or extension and the Commission may deny a request for an extension, may require a new notice of intent, may make a new determination of applicability grant

extensions for up to three years each. Notice of any decision or extensions of time granted an applicant shall be filed with the Town Clerk.

§ 194-5. Exemptions.

This chapter shall not apply to any emergency project as defined in MGL c. 131, § 40 provided that a plan is given to the Conservation Commission within 30 days of the abatement of the emergency and provided that the Conservation Commission may, after notice and public hearing, require restoration or mitigation measures including such structural changes as it deems feasible and necessary to protect the wetlands values and functions of this chapter, or to any work performed for normal maintenance or improvement of land actively devoted to agricultural, horticultural, floricultural, silvaculture, or viticultural use at the time of application, provided however that further encroachment into an area subject to this chapter or an increase in impervious surface does not constitute normal maintenance.

§ 194-6. Responsibility.

- A. Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this chapter, or in violation of any determination or permit issued under this chapter, shall forthwith comply with any such order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three years following the recording or registration of the deed or vesting of title through death showing the date or the death by which such real estate was acquired by such person.
- B. The Board of Selectmen may, upon request of the Conservation Commission, instruct the Town Counsel to take such legal action as may be necessary to restrain a violation of this chapter and enforce the orders of the Conservation Commission hereunder.

§ 194-7. Rules and regulations.

The Conservation Commission may, after a public hearing, notice of which shall be given to other Town Boards and by posting a legal advertisement in a newspaper with general circulation in the Town of Wayland at least seven days prior to such public hearing, promulgate rules and regulations to effectuate the purposes of this chapter. However, failure by the Commission to promulgate such rules and regulations or a legal declaration of the invalidity of any such rules and regulations by a court of law shall not act to suspend or invalidate the effect of this chapter.

§ 194-8. Burden of proof.

- A. The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the notice of intent will not cause harm to the functions and values sought to be protected by this chapter.

- B. Failure to provide to the Conservation Commission adequate evidence to determine that the proposed work will not cause harm to the functions and values sought to be protected by this chapter shall be sufficient cause to deny such wetlands and water resources permit or to grant such a wetlands and water resources permit with such conditions as the Commission deems reasonably necessary or desirable to carry out the purposes of this chapter or to postpone or continue the hearing to another date certain to enable the applicant and others to present additional evidence.

§ 194-9. Security.

The Conservation Commission may, as part of its wetlands and water resources permit, require, in addition to any security required by any other Town or state board, commission, agency or officer, that the performance and observance of the conditions imposed hereunder be secured by one, or in part by one and in part by the other, of the methods described in the following Subsections A and B:

- A. By a proper bond or a deposit of money or negotiable securities, sufficient in the opinion of the Conservation Commission to secure performance of the conditions and observance of the safeguards of such order of conditions.
- B. By a covenant, executed and duly recorded by the owner of record, running with the land, whereby the conditions and safeguards included in such order of conditions shall be performed before any lot may be conveyed, other than by mortgage deed.

§ 194-10. Penalties.

Whoever violates any provision of this chapter may be assessed a civil fine of not more than \$300. Each day or portion thereof of a continuing violation may constitute a separate offense. This chapter may be enforced by any Town police officer, other officer having police powers, or agents of the Conservation Commission.

§ 194-11. Appeals.

A decision of the Conservation Commission relative to a wetlands and water resources permit shall be reviewable in the Superior Court in accordance with MGL c. 249, § 4.

§ 194-12. Relation to Wetlands Protection Act.

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of the Wetlands Protection Act, MGL c. 131, § 40, and Wetlands Regulations 310 CMR 10.00 promulgated hereunder by the Massachusetts Department of Environmental Protection.

§ 194-13. Effect of partial invalidity.

A determination of the invalidity of any section or provision of this chapter by a court of competent jurisdiction shall not invalidate any other section or provision thereof, nor shall it invalidate any wetlands and water resources permit or conditions therein which has previously become final.