

## Chapter 171: Wetlands

[Adopted 5-11-87 Adj. ATM Art. 21. Amendments noted where applicable.]

### § 171.1 Purpose.

The purpose of this bylaw is to protect the wetlands, related water resources, and adjoining land areas in Westford by prior review and control of activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon Wetland values, including, but not limited to, the following: public or private water supply, groundwater protection, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries, shellfish, wildlife habitat, recreation, and aquaculture values (collectively, the “wetland values protected by this bylaw”).

### § 171.2 Prohibited activities; uses. [Amended 5-13-91 Adj. ATM Art. 22]

- A. Except as permitted by the Conservation Commission or as provided by this bylaw, no person shall remove, fill, dredge, alter, or build upon or within 100 feet of any bank, fresh water wetland, flat, marsh, wet meadow, bog, swamp, vernal pool, or beach; upon or within 100 feet of any brook, stream, pond or lake, or upon or within 100 feet of any land under said waters or within 100 feet of the 100-year flood line as determined under the Federal Emergency Management Agency (FEMA).
- B. Use prohibitions [Amended 5-7-94 ATM Art. 24; 11-13-00 STM Art. 10; 5-7-2005 ATM Art. 24]

Within the protected 100 feet to the wetlands (hereinafter “buffer zone”) and within the wetlands specified in §171-2.A, the Conservation Commission shall prohibit the following uses.

(1) Except as provided below, no septic system or other sewage disposal system, or any component of any septic system or sewage disposal system, shall be installed in wetlands or within the buffer zone to any wetlands (for the purpose of this section, "septic system or other sewage disposal system" shall mean all components thereof, including but not limited to leaching fields; septic tanks; distribution boxes; pump chambers; any and all connecting pipes between the structure, tank, and leaching field; sewer mains; collector lines; pump stations; tanks; manholes; and any other system components). Provided, however, that the following limited installations and uses may be permitted:

- (a) A septic system or other sewage disposal system, or components thereof, located within a buffer zone serving a structure existing prior to May 7, 1994, may be replaced within the buffer zone, provided that there is no other feasible alternate location; the capacity of the existing septic system or other sewage disposal system, as shown in the Board of Health records, is not increased; and the proposed new septic system or other sewage disposal system is designed and located to achieve maximum environmental protection.
- (b) Where an existing structure or structures on a property is proposed to be razed and replaced with a new structure or structures or to be remodeled, including enlargement of the structure, the Conservation Commission may allow the installation of a septic system or other sewage disposal system, or components thereof, within a buffer zone or connecting lines or pipes in a wetland if the Conservation Commission finds that the applicant provided sufficient information from a competent source to clearly demonstrate, based upon existing site conditions,

the nature of the proposed septic system or other sewage disposal system or components thereof, and special design measures, that the proposed septic system or other sewage disposal system or components thereof shall provide significantly better environmental protection than provided by the existing septic system or other sewage disposal system.

- (c) Further, the foregoing Section 171-2.B(A) shall not be construed to prohibit the installation of sewer mains, collector lines, pump stations, tanks, manholes or other components of any waste water treatment facility approved by the Massachusetts Department of Environmental Protection Bureau of Resource Protection pursuant to 314 CMR 5.00 when said installation is to occur in relation to a parcel or contiguous parcels under the same ownership as of November 1, 2000 which have a waste water treatment facility approved by the Massachusetts Department of Environmental Protection Bureau of Resource Protection pursuant to 314 CMR 5.00 with adequate existing capacity as determined by said Bureau of Resource Protection, and in existence as of November 1, 2000, and where DEP Bureau of Resource Protection has previously mandated that any new construction on the parcel or parcels must be connected to the existing waste water treatment facility, and it is necessary to cross through a Buffer Zone with an approved connection whose sole purpose is to connect from existing or proposed structures to the existing waste water treatment facility and where said installation in the Buffer Zone is to be located in a previously disturbed area within an existing Town maintained Right of Way.
- (d) Provided further that the foregoing Section 171-2.B (A) shall not be construed to prohibit the installation of sewer mains, collector lines, pump stations, tanks, manholes or other components of any existing waste water treatment facility approved by the Massachusetts Department of Environmental Protection Bureau of Resource Protection pursuant to 314 CMR 5.00, whether or not said facility is located in another Town when:
  - a. said installation is to occur solely in relation to a parcel or contiguous parcels in Westford that have been continuously used for school purposes for no less than five years prior to said installation; and
  - b. the existing wastewater treatment facility has adequate existing capacity as determined by the Bureau of Resource Protection to service the needs of the school to which it is connected; and
  - c. it is necessary to cross through a Buffer Zone with an approved connection whose sole purpose is to connect the school structure(s) to the existing waste water treatment facility and where said installation in the Buffer Zone is to be located in a previously disturbed area within an existing Town maintained Right of Way or State Highway.
- (2) Dumping of any material.
- (3) Storage of salts, fertilizers, heavy metals, petrochemical products or toxic substances.

[Adopted 11-12-2002 ATM Art. 17]

Provided further that the foregoing shall not be construed to prohibit the installation of sewer mains, collector lines, pump stations, tanks, manholes or other components of any existing waste water treatment facility approved by the Massachusetts Department of Environmental Protection Bureau of Resource Protection pursuant to 314 CMR 5.00, whether or not said facility is located in another town when:

- a. said installation is to occur solely in relation to a parcel or contiguous parcels in Westford that have been continuously used for school purposes for no less than five years prior to said installation; and
- b. the existing waste water treatment facility has adequate existing capacity as determined by the Bureau of Resource Protection to service the needs of the school to which it is to be connected; and
- c. it is necessary to cross through a Buffer Zone with an approved connection whose sole purpose is to connect the school structure(s) to the existing waste water treatment facility and where said installation in the Buffer Zone is to be located in a previously disturbed area within an existing Town maintained Right of Way or State Highway.

**§ 171.3 Exceptions.**

- A. The permit and application 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 the structure or facility is not substantially changed or enlarged, 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 regulations adopted by the Commission.
- B. The permit and application required by this bylaw shall not apply to emergency projects necessary for the protection of the health or 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 or its agent prior to commencement of work or within 24 hours after commencement, provided that the Conservation Commission or its agent certifies the work as an emergency project, provided that the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency, and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in 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.

**§ 171.4 Applications for permits; Requests for Determination.**

- A. Written application shall be filed with the Commission to perform activities regulated by this bylaw affecting resource areas protected by this bylaw. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.
- B. The Commission in an appropriate case may accept as the application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act, Massachusetts General Law chapter 131, section 40.

- C. Any person desiring to know whether or not proposed activity or an area is subject to this bylaw may in writing Request a Determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.

**§ 171.5 Fees.** [Amended 5-7-88 ATM Art. 16; 5-11-93 Adj. ATM Art. 22; Replaced Adj. ATM 5-7-07 Art. 20]

At the time of an application, the applicant shall pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetland Protection Act and Regulations.

**§ 171.6 Notice and hearings.** [Amended 5-11-93 Adj. ATM Art. 21.]

- A. At the time of the filing of a Notice of Intent or Request for Determination the applicant shall submit a current list of abutters to the land for which the application is submitted according to the most recent records of the assessors, including those across a traveled way or body of water. The Commission shall provide a proper legal notice to the applicant, who shall then be responsible for mailing in a timely fashion to arrive several days before the scheduled hearing, copies of the notice to said abutters. The applicant shall present to the Conservation Commission acceptable U.S. Post Office receipts showing that such a mailing has been performed. No public hearing under this bylaw may open until such proof of notification has been presented to the Commission. When the applicant is other than the owner of the property, then the applicant must also mail a copy of the notice to the owner.
- B. Hearings.
- C. The Commission shall conduct a public hearing on any application or request for determination, with written notice by the Commission given at the expense of the applicant, 5 working days prior to the hearing, in a newspaper of general circulation in the municipality.
- D. The Commission shall commence the public hearing within 21 days from receipt of a completed application or request for determination.
- E. The Commission shall issue its permit or determination in writing within 21 days of the day following the close of the public hearing thereon.
- F. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, Massachusetts General Laws chapter 131, section 40.
- G. The Commission shall have authority to continue the hearing to a date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission at its discretion, or comments and recommendations of boards and officials. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

**§ 171.7 Permits, determinations, and conditions.** [Amended 05-07-2005 ATM Art. 25]

- A. If the Commission after a public hearing determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the wetland values protected by this bylaw, the Commission, 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.
- B. 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 design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable or cumulatively adverse effects upon the wetland values protected by this bylaw; and where the Commission deems that no conditions are adequate to protect those values.
- C. A permit shall expire 3 years from the date of issuance. Notwithstanding the above, the Commission at its discretion may issue a permit expiring 5 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. The Commission may, at its discretion, extend any permit for up to three (3) periods of up to three (3) years each.
- D. For good cause the Commission may revoke or modify any permit issued under this bylaw after public notice and public hearing, in accordance with the provisions of section 171.6, and notice to the holder of the permit.
- E. The Commission in an appropriate case may combine the permit or other action on an application issued under this bylaw with the Order of Conditions issued under the Wetlands Protection Act.

**§ 171.8 Rules and regulations.**

- A. After public notice and public hearing the Commission shall promulgate rules and regulations to effectuate the purposes 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.
- B. At a minimum these regulations shall define key terms in this bylaw not inconsistent with this bylaw.

**§ 171.9 Definitions.** [Amended 5-13-91 Adj. ATM Art. 22; 5-7-94 ATM Art. 24]

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

**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 pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics
- C. Drainage or other disturbance of water level or water table
- D. Dumping, discharging or filling with any material which may degrade water quality
- E. Placing of fill, or removal of material, which would alter elevation

- F. Driving of piles, erection or repair of buildings, or structures of any kind
- G. Placing of obstructions or material in a body of water
- H. Destruction of plant life including cutting of trees
- I. Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water
- J. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

**Bank** shall include:

- A. The portion of the land surface which normally abuts and confines a water body. It occurs between a water body and a vegetated bordering wetland and adjacent flood plain, or, in the absence of these, it occurs between a water body and an upland. A bank may be partially or totally vegetated, or it may be comprised of exposed soil, gravel or stone.
- B. The upper boundary of a bank is the first observable break in the slope or the mean annual flood level, whichever is lower. The lower boundary of a Bank is the mean annual low flow level.

**Beach:** see definition for “bank.”

**Bog:** see definition for “freshwater wetland.”

**Brook** shall be defined as a body of running water, in accordance with the definition of “stream.”

**Buffer zone** shall be defined as all those areas that lie within 100 feet of the boundary of any bank, freshwater wetland, flat, marsh, wet meadow, bog, swamp, vernal pool, beach, brook, stream, pond, or lake; or within 100 feet of the 100-year flood line, as determined under the Federal Emergency Management Agency (FEMA)

**Freshwater wetland** [Amended 10-17-2011 STM, Art. 11] shall be defined as wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provides a significant part of the supporting substrate for plant community for at least 5 months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters.

Notwithstanding the above, the following man-made areas shall not be considered freshwater wetlands:

- (a) basins or lagoons which are part of wastewater treatment plants;
- (b) swimming pools or other impervious man-made basins; and
- (c) individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years;
- (d) retention and detention ponds created as part of a stormwater management system.

**Swamps**, as used in this section, shall mean areas where groundwater is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily include 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, willow.

**Wet meadows** as used in this section, shall mean areas where ground water is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part 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, rushes, sedges, sensitive fern, smartweed.

**Marshes** as used in this section, shall mean areas where a vegetational community exists in standing or running water during the growing season and where a significant part 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, duck weeds, eelgrass, frog bits, horsetails, hydrophilic grasses, leatherleaf, pickerel weeds, pipeworts, pond weeds, rushes, sedges, smartweeds, sweet gale, water milfoil, water lilies, water starworts, water willow.

**Lake** shall be defined as a body of water with a surface area of 10 or more acres, either artificial or natural.

**Marsh** See definition for “freshwater wetland.”

**Person** shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

**Pond** [Amended 10-17-2011 STM, Art. 11] Any open body of fresh water with a surface area observed or recorded within the last ten years of at least 10,000 square feet. Ponds may be either naturally occurring or man-made by impoundment, excavation, or otherwise. Ponds shall contain standing water except for periods of extended drought. Periods of extended drought for purposes of this definition shall be those periods, in those specifically identified geographic locations, determined to be at the “Advisory” or more severe drought level by the Massachusetts Drought Management Task Force, as established by the Executive Office of Environmental Affairs and the Massachusetts Emergency Management Agency in 2001, in accordance with the Massachusetts Drought Management Plan (MDMP).

Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds:

- (a) basins or lagoons which are part of wastewater treatment plants;
- (b) swimming pools or other impervious man-made basins; and
- (c) individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years.

**Stream** shall be defined as any body of running water, including brooks, continuous or intermittently flowing, moving in a definite channel in the surface of the ground.

**Swamp:** see definition for “freshwater wetland.”

**Vernal pool** shall be defined as a vernal pool certified by the Massachusetts Natural Heritage and Endangered Species Program.

**§ 171.10 Security.**

The intent of section 171.10 is to secure against the potential of significant environmental damage. As part of the 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 hereunder be secured wholly or in part 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 insure the protection of the interests of this bylaw.

**§ 171.11 Enforcement; violations and penalties.**

- A. The Commission, its agents, 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 examinations, surveys or sampling as the Commission deems necessary.
- B. The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by enforcement orders and civil and criminal court actions.
- C. Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission the Chief of Police shall take legal action for enforcement under criminal law.
- D. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- E. Any person who violates any provision of this bylaw, regulations thereunder, or permits issued thereunder, may be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, regulations, or permit violated shall constitute a separate offense.
- F. In the alternative to criminal prosecution the Commission may elect to utilize the non-criminal disposition procedure set forth in Massachusetts General Law chapter 40, section 21D.

**§ 171.12 Burden of proof.**

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have significant or cumulative effect upon the Wetland 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.

**§ 171.13 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.