

Part 6

WETLANDS

Chapters:

6-04 WETLANDS

Chapter 6-04

WETLANDS

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6-04-00F Footnote to Chapter 6-04

[HISTORY: Adopted 5-21-1990 Annual Town Meeting, Art. 29. Amendments noted where applicable.]

Editor's Note: This Article also repealed former Ch. 170, Wetlands, adopted 4-16-1980 ATM, Art. 36.

GENERAL REFERENCES

Excavations — See Ch. 3-08. Zoning — See Part 7.

6-04-010 Purpose

The purpose of this chapter is to protect the wetlands, related water resources and adjoining land areas in the Town of Northborough 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, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries, freshwater shellfish, wildlife habitat, recreation, aesthetics, agriculture and aquaculture values (collectively, the "wetland values protected by this chapter").

(Prior code § 170-1)

6-04-020 Applicability [Amended 4-29-98 ATM, Art. 45]

Except as permitted by the Conservation Commission or as provided in this chapter, no person shall

remove, fill, dredge, build upon or alter the following resource areas: any freshwater wetland, bordering vegetated wetland, marsh, wet meadow, bog or swamp; any bank, beach, lake, river, pond, stream or any land under said waters; any land subject to flooding or inundation by groundwater, surface water or storm flowage; any riverfront area. Any proposed work which falls within one hundred (100) feet of the previously mentioned resource areas or the riverfront area must be approved by the Conservation Commission. Plans of the same are required to be filed by the applicant under M.G.L.A. C. 131, § 40, said plan scale to be no greater than one (1) inch equals forty (40) feet.

(Prior code § 170-2)

6-04-030 Determination of boundaries [Amended 4-28-98 ATM, Art. 46]

The boundary for all vegetatively defined wetlands shall be determined in the field on the basis of standard botanical transect or plot analysis. A "vegetative wetland" is defined as any area where fifty percent (50%) or more of the vegetative community consists of wetland plant species and saturated or inundated conditions exist (as defined in M.G.L.A. C. 131, § 40). The boundary, so marked in the field, shall be surveyed in and upon the required plan at a scale no greater than one (1) inch equals forty (40) feet.

(Prior code § 170-3)

6-04-040 Exceptions

- A. The permit and application required by this chapter shall not be required for maintaining, repairing or replacing but not substantially changing or enlarging an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of the work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
- B. The permit and application required by this chapter shall not be required for work performed for normal maintenance or improvement of land in agricultural use or in aquacultural use, provided that written notice has been given to the Commission prior to commencement of the work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
- C. The permit and application required by this chapter 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 prior to commencement of work or within twenty-four (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 twenty-one (21) days of commencement of an emergency project, a permit application shall be filed with the Commission for review as provided in this chapter. 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.
- D. The permit and application required by this chapter shall be required for all other projects not specifically exempted above.

(Prior code § 170-4)

6-04-050 Applications for permits; requests for determination; certificates of compliance

[Amended 5-17-1993 ATM, Art. 26]

- A. Written application shall be filed with the Commission to perform activities regulated by this chapter affecting resource areas protected by this chapter. 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 chapter.
- B. The Commission in an appropriate case may accept as the application and plans under this chapter the notice of intent and plans filed under the Wetlands Protection Act, M.G.L.A. C. 131, § 40.
- C. Any person desiring to know whether or not a proposed activity or an area is subject to this chapter 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.
- D. At the time of an application or request for a certificate of compliance (the fees be charged only after the first inspection fails compliance), the applicant shall pay a filing fee specified in regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act, M.G.L.A. C. 131, § 40. In addition, the Commission is authorized to require the applicant to pay reasonable costs and expenses of any expert consultant if deemed necessary by the Commission to review the application. The Commission shall waive the filing fee and costs and expenses for an application or request filed by a government agency.

(Prior code § 170-5)

6-04-060 Notice; hearings

- A. Any person filing a notice of intention with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivery, to all direct abutters at their mailing addresses shown on the most recent applicable tax list of the assessors. The notice to abutters shall enclose a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters free of charge. An affidavit of the person providing such notice, a copy of the notice mailed or delivered and return receipts shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the plans, the notice of the hearing and the determination itself shall be sent by the applicant to the owner.
- B. Hearings.
 - (1) The Commission shall schedule a public hearing on any application or request for determination, with written notice given at the expense of the applicant five (5) working days prior to the hearing in a newspaper of general circulation in the municipality.
 - (2) The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed application or request for determination unless an extension is authorized, in writing, by the applicant.
 - (3) The Commission shall issue its permit or determination, in writing, within twenty-one (21) days of the close of the public hearing thereon unless an extension is authorized, in writing, by the applicant.
 - (4) The Commission may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act, MGL C. 131, § 40.

- (5) The Commission shall have authority to continue the hearing to a date certain 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 in its discretion, or comments and recommendations of boards and officials listed in § 6-04-070. In the event that 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.

(Prior code § 170-6)

6-04-070 Review by other boards and officials

Any person filing a permit application or a request for determination with the Commission shall provide a copy thereof at the same time, together with a date and time of a scheduled hearing to the Board of Selectmen, Planning Board, Board of Health, Town Engineer, Inspector of Buildings, Board of Water Commissioners, Earth Removal Board and two (2) copies to the State Department of Environmental Protection. The Commission shall seek written comments from appropriate Boards as necessary. The applicant shall have the right to receive any such comments and recommendations and to respond to them at a hearing of the Commission prior to final action.

(Prior code § 170-7)

6-04-080 Issuance or denial of permit; expiration; revocation; recording

- A. If the Commission, after a public hearing, determines that the activities which are the subject of the application are likely to have significant or cumulative effect upon the wetland values protected by this chapter, the Commission, within twenty-one (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 chapter; 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 cumulative effects upon the wetland values protected by this chapter; and where no conditions are adequate to protect those values.
- C. A permit shall expire three (3) years from the date of issuance. Notwithstanding the above, the Commission, in its discretion, may issue a permit expiring five (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. Any permit may be renewed once for an additional one-year period, provided that a request for a renewal is received, in writing, by the Commission prior to expiration.
- D. For good cause the Commission may revoke or modify a permit issued under this chapter after notice to the holder of the permit and notice to the public, abutters and town boards pursuant to § 6-04-060 and a public hearing.
- E. The Commission may combine the permit or other action on an application issued under this chapter with the order of conditions issued under the Wetlands Protection Act.
- F. No work proposed in any application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Registry of Deeds or, if the land affected thereby be registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies, in writing, to the Commission that the permit has been so recorded.

(Prior code § 170-8)

6-04-090 Rules and regulations

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this chapter. 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 chapter.

(Prior code § 170-9)

6-04-100 Definitions

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

ALTER — Includes, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this chapter:

- (1) Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind.
- (2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics.
- (3) Drainage or other disturbance of water level or water table.
- (4) Dumping, discharging or filling with any material which may degrade water quality.
- (5) Placing of fill or removal of material which would alter elevation.
- (6) Driving of piles, erection or repair of buildings or structures of any kind.
- (7) Placing of obstructions or objects in water.
- (8) Destruction of plant life, including cutting of trees.
- (9) Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water.
- (10) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

PERSON — Includes 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.

B. Except as otherwise provided in regulations of the Commission, the definitions of terms in this chapter shall be as set forth in the Wetlands Protection Act, MGL C. 131, § 40.

(Prior code § 170-10)

6-04-110 Special conditions

As part of a permit issued under this chapter, 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 one (1) or more of the methods described below:

- A. Security: by a proper bond or deposit prior to commencement of work. The amount is to be determined by the Conservation Commission or its agent, to be released in whole or in part upon issuance of a certificate of compliance for work performed pursuant to the permit.
- B. Conservation restrictions: by a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.
- C. Deed references. There shall be a deed reference to the fact that there are wetlands resources on the property and that no activity (dredging, altering or filling) shall take place without first contacting the Northborough Conservation Commission. A copy of the deed reference shall accompany the written request for a certificate of compliance.

(Prior code § 170-11)

6-04-120 Enforcement

- 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 chapter 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 chapter, its regulations and permits issued thereunder by violation notices, administrative 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. The Board of Selectmen, after consultation with the Conservation Commission, shall appoint a compliance officer who shall have the authority to assist the Commission with enforcement.

(Prior code § 170-12)

6-04-130 Violations and penalties

Any person who violates any provision of this chapter, regulations thereunder or permits issued thereunder shall be punished by a fine of not more than one hundred dollars (\$100.) for the first violation, two hundred dollars (\$200.) for the second violation and three hundred dollars (\$300.) for subsequent violations as allowed under MGL C. 40, § 21 D. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the chapter, regulation or permit violated shall constitute a separate offense.

(Prior code § 170-13)

6-04-140 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 unacceptable significant or cumulative effect upon the

wetland values protected by this chapter. 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.
(Prior code § 170-14)

6-04-150 Appeals

A decision of the Commission shall be reviewable in the Superior Court in an action filed within sixty (60) days thereof, in accordance with MGL C. 249, § 4.
(Prior code § 170-15)

6-04-160 Statutory authority

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 regulations thereunder.
(Prior code § 170-16)

6-04-170 Severability

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof nor shall it invalidate any permit or determination which previously has been issued.
(Prior code § 170-17)