

MAYNARD WETLANDS PROTECTION REGULATIONS

SECTION I - GENERAL PROVISIONS

A. AUTHORITY

These Regulations are promulgated by the Town of Maynard Conservation Commission pursuant to the authority granted to it under Section 8 of the Town of Maynard Wetlands Administration Bylaw ("the Bylaw"). These Regulations shall complement the Bylaw, and shall have the force of law upon their effective date. Terms and definitions used herein are consistent with usage in the Bylaw.

The failure of these Regulations to address all aspects of the Bylaw, or a legal declaration of their invalidity by a court of law, shall not act to suspend or invalidate the effect of the Bylaw.

B. PURPOSE

The purpose of these Regulations is to define and clarify the process and standards applied under the Bylaw by establishing definitions and uniform procedures by which the Conservation Commission may carry out its responsibilities under the Bylaw.

Wetlands contribute to a number of public interests and are therefore protected by the Bylaw. The Bylaw identifies additional interests not recognized by the Massachusetts Wetlands Protection Act and Massachusetts Rivers Protection Act (MGL Ch. 131 S.40, "the Acts"). These include but are not limited to: erosion and sedimentation control, avoidance of water and soil pollution, protection of rare species habitat including rare plant species, agriculture, aquaculture, and recreation values. Any permit issued under the Bylaw and Regulations must therefore not adversely affect these public interests.

C. JURISDICTION

The Bylaw protects all areas defined in the Massachusetts Wetland Protection Act and Rivers Protection Act.

The Bylaw provides additional protection to wetland resources and Buffer Zones, portions or all of which are not subject to protection under the State Acts. These resource areas and Buffer Zones include:

- (1) **Vernal pools.** The presumption of essential habitat value may be overcome by the presentation of credible evidence which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. The Buffer Zone for a vernal pool shall extend 100 feet horizontally outward from the mean annual high-water line defining the depression.
- (2) **Isolated land subject to flooding.** The Buffer Zone for isolated land subject to flooding shall extend 25 feet horizontally outward from the boundary of the resource area.
- (3) **Vegetated wetlands.** The Buffer Zone for vegetated wetlands shall extend 100 feet horizontally outward from the boundary of the resource area.
- (4) **Ponds.** The Buffer Zone for ponds over 5,000 square feet shall extend 100 feet from the mean annual high-water line.

- (5) **Intermittent streams.** The Buffer Zone for intermittent streams shall extend 100 feet horizontally outward from the boundary of the resource area.
- (6) **Rivers or perennial streams and their associated 200-foot riverfront areas.** Criteria for determining whether a particular stream or section of stream flows throughout the year is at the discretion of the Commission and may be based on: (1) reference on a USGS topographic map to a perennial stream, (2) calculation of watershed size, or (3) observation on the part of experienced Commissioner(s) or resident experts that flow has historically been perennial except during times of drought. There is no Buffer Zone associated with riverfront areas.

SECTION II - RESOURCE AREAS PROTECTED UNDER THE BYLAW

All resource areas defined in the bylaw are protected in their entirety from any form of alteration or degradation.

SECTION III - BUFFER ZONES PROTECTED UNDER THE BYLAW

A. PREAMBLE

Buffer Zones are highly likely to be significant to the interests identified in Section I.B, above. Buffer Zones can be vital in protecting the interests of the Bylaw in many ways, including but not limited to:

1. **Temperature:** Shade and cover provided by riparian vegetation can moderate water temperature in small streams.
2. **Sediments and Other Contaminants:** Buffer Zones filter sediments and other contaminants (e.g., pesticides and heavy metals) from surface flow. Buffer Zones also prevent erosion in riparian areas and preclude development that could lead to increased contaminant loading.
3. **Nutrients (Nitrogen and Phosphorous):** Buffer Zones reduce nutrient inputs into streams by: 1) filtering from surface flow the nutrients bound to sediments, 2) removing nutrients from groundwater through uptake in vegetation and by de-nitrification, and 3) precluding development which could increase nutrient loading (e.g., septic systems, fertilized lawns, and landscaping).
4. **Maintenance of stream flow:** Buffer Zones can store water and help maintain stream base flow and water quality during low flow periods.
5. **Wildlife habitat:** The vegetated uplands adjacent to wetlands constitute one of the richest zones for aquatic organisms, mammals, birds, and amphibians, and provide corridors critical for wildlife movement.

B. PRESUMPTIONS OF SIGNIFICANCE

Where a proposed activity involves the removing, filling, dredging or altering of a Buffer Zone, the Commission shall presume that protection of the Buffer Zone is significant to the interests specified in Section I of the Bylaw. This presumption is rebuttable and may be overcome upon a clear showing that the Buffer Zone does not play a role in the protection of said interests. In the event that the Commission deems that the

presumption has been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

C. PERFORMANCE STANDARDS WITHIN THE BUFFER ZONES

1. Inner 50-Foot No-Disturbance Zone for Undisturbed Lands

- Undisturbed Land is land determined by the Commission to be of a predominantly natural character or to have been altered after May 1996 without a permit from the Conservation Commission.
- No alterations are permitted within 50-feet of a wetland resource area, except those alterations explicitly set forth as part of a pre-approved restoration plan approved by the Conservation Commission.
- Prohibited alterations include, but are not limited to, grading, landscaping, clearing or cutting of vegetation, filling, excavating, and construction of roads or structures.
- Structures include, but are not limited to, single family houses, multi-family dwellings, commercial or industrial buildings, porches, decks, house additions, pools, septic systems, and sheds.
- Driveways, roadways, fences, and facilities for stormwater management may be allowed in the 50-foot No-Disturbance Zone by waiver when no other feasible alternative exists; see Section IV.

2. Inner 50-Foot No-Disturbance Zone for Disturbed Lands

- Disturbed Land is land determined by the Commission to be of a legally modified nature (e.g., parking lot, lawn, non-native landscaping, patio, etc.), modified prior to May 1996 or after May 1996 with a permit from the Conservation Commission).
- No alterations resulting in a net increase in impervious surface area, a net increase in non-native or invasive species, a net increase in stormwater runoff, a net increase in lawn area, or net decrease in vegetative cover will be permitted within 50 feet of the edge of the wetland resource area, except as part of a pre-approved restoration plan approved by the Conservation Commission.
- No structures shall be constructed or placed on pervious surfaces within 50 feet of the edge of the wetland resource area without compensatory restoration and mitigation.
- Structures include, but are not limited to, single family houses, multi-family dwellings, commercial or industrial buildings, porches, decks, house additions, pools, septic systems, and sheds.
- Driveways, roadways, fences, and facilities for stormwater management may be allowed in the 50-foot No-Disturbance Zone by waiver when no other feasible alternative exists; see Section IV.)

3. **Outer 50-foot Buffer Zone:** Activities within the outer 50 feet of a Buffer zone shall not adversely affect the form or function of the wetland resource area or the Inner 50-foot No-Disturbance Zone.

4. **25-foot Isolated Land Subject to Flooding No-Disturbance Zone:** The entire 25-foot Buffer zone surrounding an isolated land subject to flooding shall be a no-disturbance zone, with the same conditions and performance standards identified above in paragraph 1 (for the Inner 50-foot No-Disturbance Zone for Undisturbed Land).

5. **100-Foot Vernal Pool No-Disturbance Zone:** No alteration shall be permitted in the entire 100-foot Buffer Zone of a vernal pool (except as part of a pre-approved restoration plan approved by the Conservation Commission), with the same conditions and performance standards identified above in paragraph 1 (for the Inner 50-foot No-Disturbance Zone for Undisturbed Land).

SECTION IV- WAIVERS AND MITIGATION

The performance standards for wetland resource areas and their Buffer Zones have been adopted to ensure that the interests of the Bylaw are adequately protected. The Commission recognizes that, in certain situations, a waiver of a specific performance standard may be appropriate for a particular project when the waiver is consistent with the intent and purpose of the Bylaw and these Regulations. The applicant shall have the burden of demonstrating that the granting of the waiver is consistent with the intent and purpose of the Bylaw and these Regulations. The Commission shall act on the request for a waiver and shall provide to the applicant, either by certified mail or hand delivery, its written decision. The following paragraphs describe the waiver and its associated mitigation measures for the Buffer Zone performance standards.

A. WAIVERS

The Commission may grant a waiver from these Regulations for an alteration of a Buffer Zone area in situations where no feasible alternative provides less impact to the resource area values. The applicant is responsible for conducting an alternatives analysis to show that there are no such feasible alternatives. The Commission may grant a waiver of a performance standard and impose such additional or substituted mitigation requirements as it deems necessary. The applicant must show, clearly and convincingly that:

1. There are no practicable conditions or alternatives that would allow a project to proceed in compliance with the Regulations; and
2. The project, or its natural and consequential effects, will have the least possible adverse effects upon any of the interests protected by the Bylaw.

B. MITIGATION

In the case where a waiver is granted, the Commission shall require mitigation measures to be implemented to offset potential impacts to the wetland resource areas. The mitigation must maintain or improve the natural capacity of a resource area to protect the interests identified in the Bylaw.

SECTION V - MUNICIPAL FILING FEES

A. PREAMBLE

The review of applications and monitoring of an active site requires the expenditure of significant municipal resources. Therefore, additional municipal filing fees will be required.

B. REQUESTS FOR DETERMINATION OF APPLICABILITY

A municipal filing fee of \$80 will be charged to all Request for Determination of Applicability filings. This fee may be waived if the applicant's concerns include no more than one residential property and the request is filed by the property owner on his/her own behalf, and if the project qualifies as an exempt minor project (if there is a project).

C. NOTICES OF INTENT

An additional municipal filing fee equal to the full filing fee under the Massachusetts Wetlands and Rivers Protection Acts will be applied to all Notice of Intent filings and amended Orders of Conditions. Filings associated with the rectification of a violation will incur an additional municipal filing fee of double the fee due under the Massachusetts Wetlands and Rivers Protection Acts.

D. ORDERS OF CONDITIONS EXTENSION

A municipal filing fee of \$50 will be charged for an Order of Condition extension that was filed at least 30 days prior to the expiration of the original Order of Condition. Extension requests filed less than 30 days prior to the expiration of the original Order of Condition will be charged a municipal filing fee of \$100.

- *These Regulations were duly voted by the Maynard Conservation Commission at a public hearing on 21 December, 2004.*
- *The fee schedule (Section V) was revised and was duly voted by the Maynard Conservation Commission at a public hearing on 19 December, 2006.*
- *Effective date: 1 July 2007.*