

1.18 WETLANDS BYLAW

1.18.1 Purpose

The purpose of this Bylaw is to conserve and protect the resource areas, the resource interests, and natural resource services, in the Town of Bolton by regulating activities deemed by the Conservation Commission (“Commission”) likely to have a significant or cumulative adverse effect upon resource interests. Protected resource interests include, but are not limited to: flood control, storm damage prevention, public and private water supplies, ground water, water quality, prevention of pollution and sedimentation, fisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, adjoining land areas and recreation deemed important to the community. Natural resource services may be classified as either ecological service --the physical, chemical, or biological functions that one resource provides for another; or public service --the public uses of natural resources or functions of natural resources that benefit the public. This Bylaw is intended to utilize the Home Rule authority of the Town of Bolton to conserve and protect additional resource areas, with additional standards and procedures stricter than those of the Wetlands Protection Act, (M.G.L. Ch. 131, Section 40) and Regulations thereunder, (310 CMR 10.00).

1.18.2 Jurisdiction

Unless excepted in Section 1.18.3 or pursuant to a Wetlands Bylaw Permit, no person shall commence to remove, fill, dredge, build upon, degrade, pollute, discharge into, or otherwise alter the following resource areas: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pool habitat, including but not limited to state certified vernal pools; banks; fresh water seeps; reservoirs; lakes; rivers; streams and creeks, whether perennial or intermittent; riverfront areas which are (a) lands within two hundred feet (200’) of perennial rivers or streams; beaches; lands under water bodies; lands subject to flooding or inundation by ground water or surface water; and land within twenty-five feet (25’) of the above resources areas, except for riverfront areas (collectively the “wetland resource areas” protected under this bylaw) and adjacent upland resource areas (collectively the “adjacent upland resource areas” protected under this bylaw). This 25-foot prohibition, however, shall not apply to crossings essential to access upland areas. Said resource areas shall be protected whether or not they border surface waters.

Adjacent upland resource areas shall include all lands within seventy-five feet (75’) of wetland resource areas enumerated above, except for perennial streams and rivers for which the adjacent upland resource area extends for two hundred feet (200’) from the top of the bank.

Except as expressly permitted by the Commission or as provided in this Bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, pollute, discharge

into, or otherwise alter a wetland resource area, or an adjacent upland area, as described above.

Where a proposed activity involves work within a resource area, the Commission shall presume that the area is significant to protect the resource interests, enumerated in Section 1.18.1.

Where the proposed activity involves work within the riverfront area, the Commission shall presume the area is significant to protect the riverfront area and its resource interests. This 200-foot presumption does not apply to the redevelopment of those portions of riverfront areas regarded as “previously developed” or “degraded” or to “paths”. Orders of Conditions for redevelopment and paths are granted at the discretion of the Commission.

These presumptions are rebuttable and may be overcome by a preponderance of the evidence showing that the resource area does not play a role in the protection of one or more of these interests. In the event that the presumption is deemed to have been overcome as to the protection of all the resource interests, the Commission shall make a written determination to this effect, setting forth its grounds.

Where the applicant provides information that the resource area at the site of activity does not play a role in the protection of an interest, the Commission may determine that the presumption for that interest has been rebutted. Where the applicant provides information that site of the activity plays a partial role in the protection of an interest, the Commission may determine that the presumption for that interest has been partially rebutted and the presumption of significance is partially overcome.

1.18.3 Applicability, Limitations, and Exceptions

Where the presumption set forth in Section 1.18.2 is not overcome, the applicant shall prove by a preponderance of the evidence that there are no practicable and substantially equivalent economic alternatives to the proposed project with less adverse effects on the interests identified in Section 1.18.1. Further, the applicant shall prove that the work including proposed mitigation will have no significant adverse or cumulative adverse effect on the resource areas or resource interests. In the event that the Commission finds that the applicant has failed to make either of said proofs, it shall make a written determination setting forth its grounds in an Order of Conditions that shall impose conditions that will protect the interests which make the resource area significant or shall in a written determination deny the activity as it cannot be conditioned to protect the interests of the Bylaw and/or its regulations.

To prevent the loss of resource areas, applicants shall be required to avoid, where feasible, altering a resource area; minimize alteration of a resource area; and, where alteration is unavoidable, complete full mitigation. Replication of resource areas may be required as a form of mitigation.

Exceptions to the Bylaw shall be limited to: maintaining, repairing or replacing, adding to, but not substantially changing or enlarging, an existing single-family residential structure, septic system or appurtenance; maintaining landscaping and gardens accessory to an existing single-family residential structure; lands lawfully in agriculture (commercial and non-commercial) at the time the work takes place; forest cutting (as defined in 310 CMR 10.04, 'Agriculture'(b) 14); maintaining or repairing, but not substantially changing or enlarging, an existing structure in a resource area, such as drainage structures, culverts, bridges, driveways or roadways; maintaining or repairing, but not substantially changing or enlarging, fire protection water holes, artificial ponds; clearing of water courses, conservation and outdoor recreation; existing orders and filings before the Commission prior to the effective date of this Bylaw; public utilities (as defined in 310 CMR part 10.53 section (3)(d)); projects carried out under the direction of the U.S. Natural Resource Conservation Service; and emergency projects necessary for the protection of the health and safety of the public and subject to the provisions and conditions of 310 CMR part 10.06.

No activities other than the excepted activities shall commence without receiving and complying with a permit issued pursuant to this Bylaw. No work proposed in any Wetlands Bylaw Permit application shall be undertaken until the Wetlands Bylaw Permit issued has been recorded in the registry of deeds, or if the land is registered land, filed in the appropriate land court, and until the holder of the Wetlands Bylaw Permit certifies in writing that the Wetlands Bylaw Permit has been recorded. Such certification shall include the book and page or instrument number and date.

1.18.4 Applications for Wetlands Bylaw Permit and Requests for Determination

Any person desiring to know whether a proposed activity is excepted or an area is subject to this Bylaw may request a determination from the Commission by filing a Request for Determination of Applicability (RFD). Such a Request for Determination of Applicability shall include information and plans as required by the Commission.

Written application shall be filed with the Commission to perform activities within the resource areas protected by this Bylaw. The Wetlands Bylaw Permit application shall include such information and plans as deemed necessary by the Commission to describe proposed activities and their effects on the resources areas. Where appropriate, the Commission may accept the Notice of Intent and plans filed under the Wetlands Protection Act and the Regulations as the Wetlands Bylaw Permit application and plans under this Bylaw.

At the time of a request for determination or a Wetlands Bylaw Permit application, the applicant shall pay a filing fee specified in the Regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act (G.L. Ch 131 Section 40) and Regulations (310 CMR 10.00). The fee shall be deposited in a

dedicated account, for use only for wetland protection activities. Town, county, state and federal projects are exempt from the filing fee.

The Commission is authorized to require the applicant to pay for the reasonable costs and expenses borne by the Commission for specific expert engineering or for other outside consultant services in order to reach a final decision on the application.

The Commission may require that the applicant's performance and observance of the Order of Conditions, including mitigation, be secured wholly or in part by one or more of the methods set forth in the regulations. This security shall be in addition to any security required by any other town or state board, agency or official.

1.18.5 Notice and Hearings

Wetlands Bylaw Permit applications shall be filed with the Commission subject to the provisions and conditions of 310 CMR part 10.00 and the Commission may, in an appropriate case continue a public hearing for good cause and may combine its hearing under this Bylaw with the hearing conducted pursuant to the Wetlands Protection Act, M.G.L. Ch 131, Section 40 and Regulations, 310 CMR 10.00.

1.18.6 Wetlands Bylaw Permits, and Certificates of Compliance

Within 21 days of the close of the hearing the Commission shall issue or deny a Wetlands Bylaw Permit for the activities requested. If a Wetlands Bylaw Permit is issued, the Commission shall impose conditions, which the Commission deems necessary or desirable to protect resource areas, resource interests and natural resource services, and all activities shall be done in accordance with those conditions.

Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

Wetlands Bylaw Permits issued hereunder shall expire three years from the date of issuance and may be renewed by the applicant for additional one year periods only where a written request for renewal is received by the Commission not less than 30 days prior to the expiration of the Wetlands Bylaw Permit and that good cause has been shown for said extension and that there is no likely significant or cumulative adverse effect upon any of the resource area or resource interests.

Notwithstanding the above, a Wetlands Bylaw Permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

If the activity has been completed in accordance with said Wetlands Bylaw Permit, the Commission shall, within 21 days after a request, issue a Certificate of Compliance evidencing such determination, which may be combined with the Certificate of Compliance under the Wetlands Protection Act. A Certificate of Compliance may

specify conditions, which will continue to apply for a fixed number of years or permanently and shall apply to all owners of the land. The Certificate of Compliance shall be recorded in the Registry of Deeds, or if the land is registered land, in the appropriate land court, and the Commission notified in writing by the holder of the Wetlands Bylaw Permit that the Certificate of Compliance has been recorded. Such notification shall include the book and page or instrument number and date.

Violations of this Bylaw, submission of false information or new information that substantially alters the likely impact of the project on the resource areas may cause the Commission to revoke or modify a Wetlands Bylaw Permit or determination issued under this Bylaw after notice to the holder of the Wetlands Bylaw Permit or determination, notice to the public, abutters and town boards, pursuant to Section 1.18.5 and a public hearing.

Appeal from this Bylaw shall be to the Superior Court.

1.18.7 Regulations

After public notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purpose of this Bylaw effective when voted and filed with the Town Clerk. Failure to promulgate such rules and regulations or a legal declaration of their invalidity by court of law shall not act to suspend or invalidate the effect of this Bylaw.

1.18.8 Definitions

Except as otherwise provided in this Bylaw or in regulations of the Commission, the definitions of terms in this Bylaw shall be as set forth in the Wetlands Protection Act, M.G.L. Ch 131 Section 40, and Regulations 310 CMR 10.00.

1.18.9 Enforcement

The Commission shall have the authority to enforce this Bylaw, its regulations, and Wetlands Bylaw Permit issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Any person who violates provisions of this Bylaw, its regulations and/or Wetlands Bylaw Permits may be ordered to restore the property to its original condition, pay damages and take other action deemed necessary to remedy such violations, or may be fined, or both.

Any person, who violates any provisions of this Bylaw or regulations, Wetlands Bylaw Permits or administrative orders issued thereunder, may be served with a Notice of Violation enumerating the alleged violations. As an alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in M.G.L. Ch 40, Section 21D.

The violator shall pay any and all costs including reasonable attorney fees incurred by the Town. The fine for a violation of this Bylaw shall be Three Hundred

Dollars (\$300.00) for each offense; each day of the violation shall be a separate offense. Enforcement will be done in accordance with Step Enforcement Policy Against Alleged Violations of the Wetlands Protection Act and other-Local By-laws under the jurisdiction of the Bolton Conservation Commission, dated May 2, 2005.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

1.18.10 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 Wetlands Bylaw Permit or determination, which previously has been issued.

Amended through May 1, 2006 with AG office amendments and approval.