

CHAPTER 38

MUNICIPAL WETLANDS PROTECTION

§ 38 - 1. Purpose

The purpose of this chapter is to protect the wetlands, water resources, and adjoining land areas in the Town of Williamstown by regulating activities deemed by the Conservation Commission ("the Commission") likely to have a significant or cumulative adverse effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, fisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, and recreation values, deemed important to the community (collectively, the "resource area values protected by this chapter"). This chapter is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth.

§ 38 - 2. Wetlands Protection Map

The Conservation Commission shall prepare, and may amend from time to time, a "Williamstown Conservation Commission Wetlands Protection Map" which shall be designed to illustrate the areas which may be jurisdictional under this chapter. Because of the limitations of mapping technology, the jurisdictional areas on the map will be approximate and may need to be verified by field observations and measurements. The provisions of this Chapter defining areas subject to the protection of this Chapter shall control over any inconsistent information on the map.

§ 38 - 3. Protection of Vernal Pools

A. Purpose of Chapter Protecting Vernal Pools

Vernal Pools are significant to the protection of wildlife and wildlife habitat. Vernal Pools constitute a unique and increasingly rare type of wetland that are inhabited by many species of wildlife, some of which are totally dependent on Vernal Pools for their survival. The wood frog (*Rana sylvatica*) and all species of mole salamanders (genus *Ambystoma*) that occur in Massachusetts breed exclusively in Vernal Pools. Areas in the immediate vicinity of the pool also provide these species with important non-breeding habitat functions, such as feeding,

shelter, and over-wintering sites. Many other species of amphibians utilize Vernal Pools for breeding and non-breeding functions, although they are not restricted to this type of wetland. The protection of Vernal Pools is essential for the continued survival of wildlife species that are dependent upon this unique and threatened resource area.

B. Definition, Critical Characteristics and Boundary

Vernal Pool means a confined basin depression which, in most years, holds water for a minimum of two consecutive months, is free of adult fish populations and has no permanently flowing outlet. A confined basin depression is protected under the chapter as a Vernal Pool if it meets the biological and physical criteria identified by the Natural Heritage and Endangered Species Program which provide guidelines for the identification of Vernal Pools.

It is not necessary for a Vernal Pool to be located within another type of wetland resource area, or be certified as a vernal pool by the MA Natural Heritage and Endangered Species Program of the Division of Fisheries and Wildlife, to be eligible for protection under this chapter.

C. Presumptions of Significance

Where a proposed activity involves the removing, filling, dredging or altering of a Vernal Pool, the Commission shall presume that the Vernal Pool is significant to the values specified in the section 38-1 of this chapter, and the Commission shall have the authority to prohibit or to place conditions on such activity. This presumption is rebuttable and may be overcome upon a clear showing that the temporary pool does not play a role in the protection of said interests. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

D. Performance Standards

1. **50-foot No-Disturbance Zone:** No prohibited activity shall be permitted within 50 feet of the delineated edge of a Vernal Pool. Prohibited activities include any activity which will remove, fill, dredge or alter the Vernal Pool.
2. **100-foot No-Build and Septic System Setback Zone:** No structures shall be permitted within 100 feet of the delineated edge of a Vernal Pool. Structures include, but are not limited to foundations and footings associated with single family dwellings, multi-family dwellings, commercial and/or industrial buildings, footings, pilings, impervious pads or sonotubes associated with porches, patios, decks, house additions, building additions,

pools, septic systems and sheds. No septic system soil absorption system shall be permitted within 100 feet of the delineated edge of a Vernal Pool when the proposed soil absorption system is located up gradient of the Vernal Pool. Driveways, roadways, retaining walls and landscape boulder walls may be allowed no closer than 75 feet of the delineated edge of a Vernal Pool when no other feasible location or alternative means of access exists. Any permitted work shall not obstruct the migratory pathways of Vernal Pool breeders such as Ambystomid salamanders and wood frogs.

§ 38 - 4. Protection of Intermittent Streams

A. Purpose of Chapter Protecting Intermittent Streams

Perennial streams are afforded protection under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) by imposing 200-foot riparian zones extending laterally from the tops of their banks. Intermittent streams are the headwaters of perennial streams, only some of which are protected by the Wetlands Protection Act. The purpose of this chapter is to protect those intermittent streams currently not protected.

B. Definition, Critical Characteristics and Boundary

Stream means a body of running water, with a distinct bed and banks, and which moves in a definite channel in the ground due to a hydraulic gradient. A portion of a stream may flow through a culvert or beneath a bridge.

Channel means a natural or artificial waterway that periodically or continuously contains moving water. It has a distinct bed and banks that confine the water flowing in the channel.

Intermittent Stream means a river or stream shown as intermittent or not shown at all on the current USGS map or more recent map provided by the Department of Environmental Protection. Those streams shown as intermittent, or not shown at all, may be considered perennial if the watershed size is at least one-half square mile and it meets either the STREAMSTATS or stratified drift provisions. Streams that do not fit into these categories must be classified as intermittent. Streams that are observed not flowing for at least four days in a consecutive 12-month period are intermittent (as opposed to perennial), unless the observation occurs during a period of extended drought or the stream is significantly affected by withdrawals, impoundments, or other man-made flow reductions or diversions. Upstream of the first point of perennial flow, a stream is normally intermittent.

Buffer zone means that area of land extending 100 feet horizontally outward from the upper boundary of the bank (i.e. the mean annual high water line) of any intermittent stream.

C. Presumptions of Significance

Where a proposed activity involves the removing, filling, dredging or altering an area within 100 feet of an intermittent stream, the Commission shall presume that this buffer zone is potentially significant to the values specified in the section 38-1 of this chapter, and the Commission shall have the authority to prohibit or to place conditions on such activity. This presumption is rebuttable and may be overcome upon a clear showing that proposed activity in the buffer zone will not adversely impact any Resource Area. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

D. Performance Standards

1. Any proposed work in the buffer zone shall not destroy or otherwise impair any portion of an intermittent stream.
2. The Commission may require a preconstruction review of work planned in the buffer zone to ensure that adjacent resource areas are not adversely affected during or after completion of the work.
3. For work in the buffer zone subject to review, the Commission may impose conditions to protect the adjacent resource area. The potential for adverse impacts to resource areas from work in the buffer zone may increase with the extent of the work and the proximity to the resource area. The Commission may consider the characteristics of the buffer zone, such as the presence of steep slopes, which may increase the potential for adverse impacts on resource areas. Conditions may include limitations on the scope and location of work in the buffer zone as necessary to avoid adverse impact on resource areas. The Commission may require erosion and sedimentation controls during construction, a clear plan of work, and the preservation of natural vegetation adjacent to the resource area and/or other measures commensurate with the scope and location of the work within the buffer zone.

§ 38 - 5. Protection of Isolated Vegetated Wetlands

A. Purpose of Chapter Protecting Isolated Vegetated Wetlands

Many of Williamstown's wetlands occur as isolated wetlands that do not meet the size thresholds for protection in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations

(310 CMR 10.00) as “isolated lands subject to flooding” and do not border on other (protected) water bodies. This chapter extends protection to all wetlands greater than 500 sq. ft. in area whether or not they border on protected water bodies.

B. Definition, Critical Characteristics and Boundary

Isolated vegetated wetland shall include all wetlands whether or not they border on a protected water body. For the purposes of this chapter, all bordering vegetated wetlands, as well as all isolated vegetated wetlands encompassing at least 500 sq. ft. in area, shall be protected. “Isolated vegetated wetlands” must meet all other definitional requirements of the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00).

C. Presumptions of Significance

Where a proposed activity involves the removing, filling, dredging or altering of an isolated vegetated wetland, the Commission shall presume that the wetland is significant to the values specified in the section 38-1 of this chapter, and the Commission shall have the authority to prohibit or to place conditions on such activity. This presumption is rebuttable and may be overcome upon a clear showing that the proposed activity will not adversely impact any resource area. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

D. Performance Standards

Any alteration of any isolated vegetated wetland shall be treated under the standards for Bordering Vegetated Wetlands under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00). Activities occurring within a 100 foot buffer zone extending from the delineated margin of any isolated vegetated wetland can be conditioned by the Commission.

§ 38 - 6. Administrative Processes

- A. A Written application shall be filed with the Conservation Commission to perform activities affecting areas protected by this bylaw. Applicants will complete WPA Form 1 - Request for Determination of Applicability, WPA Form 3 - Notice of Intent, WPA Form 4 - Abbreviated Notice of Intent, or WPA Form 4A - Abbreviated Notice of Resource Area Delineation, as applicable. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource

areas protected by this bylaw. 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 any application and plans filed under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00), but the Commission is not obliged to do so.
- C.** Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a Request for Determination of Applicability (RDA) or Abbreviated Notice of Resource Area Delineation (ANRAD) filed under the Act shall include information and plans as are deemed necessary by the Commission.
- D.** At the time of an application, the applicant shall pay such publication and application fees as specified by the Commission.

 - 1. A fee, as set by the Department of Inspection Services, to publish in a newspaper of general circulation. This fee shall be applicable to all filings.
 - 2. Applications for work in areas governed solely by this chapter, and requiring submission of a Notice of Intent, Abbreviated Notice of Intent, or Abbreviated Notice of Resource Area Delineation, will also submit a fee equal to the municipal portion of the wetland filing fee set by the Department of Environmental Protection.
 - 3. Should the project be subject to both the Wetlands Protection Act and this chapter, the applicant will only submit the appropriate fee(s) as specified by the Wetlands Protection Act.
- E.** Pursuant to G.L. Ch. 44 §53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.
- F.** Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole discretion of the Commission. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall

provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

- G. The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing.
- H. The applicant may appeal the selection of an outside consultant to the Board of Selectmen, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant shall make such an appeal in writing, and must be received within ten (10) business days of the date that request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the application.
- I. Applicants will provide nine (9) complete copies of any application, both Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00), and this chapter, submitted to the Conservation Commission for consideration.
- J. The applicant will provide a digital submission, compatible with MassGIS programs, of any delineation.

§ 38 - 7. Exemptions and Exceptions

- A. The application and permit required by this chapter shall not be required for maintaining, repairing, remodeling, but not substantially changing or enlarging an existing and lawfully located single family residential structure or customary appurtenance thereto, as long as the footprint of any proposed addition is not any closer to the resource areas protected by this chapter than the existing structure, and there is no reasonable alternative location on the owner's property for the new structure that is further from the resource areas, as determined by the Commission.

- B. The Commission may issue a generic or on-going permit for maintaining, repairing, or replacing an existing and lawfully located structure or facility to provide electric, gas, steam, water, telephone, telegraph, or other telecommunication services, storm drainage, and sewer, provided that the structure or facility is not substantially changed or enlarged, as determined by the Commission, and provided that written application has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in Regulations adopted by the Commission. These standards and specifications shall conform to best management practices in the Commonwealth of Massachusetts.
- C. The application and permit 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 24 hours after the commencement of the emergency project, and provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and public hearing revoke or modify an emergency project approval and order restoration and mitigation measures.
- D. The application and permit required by this Chapter shall not be required for work performed for normal maintenance or improvement of land which is lawfully in agricultural use, as defined in the Wetland Protection Act Regulations 310 CMR 10.04, at the time the work takes place.
- E. The Commission, at its sole and reasonable discretion, may issue a permit for the Limited Projects identified in 310 CMR 10.53(3), in areas of jurisdiction addressed by this chapter, with the same or additional performance standards, such as limits on road width or location or multiple driveway crossings. Proposed activities that qualify as Limited Projects per 310 CMR 10.53 (e.g. maintenance of public roadways, water dependent uses, public water supply exploration, and access driveways) must be reviewed by the Conservation Commission, which has the discretion to permit with conditions to ensure that the interests of the Wetlands Protection Chapter are protected.

§ 38 - 8. Enforcement

- A. No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this chapter, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore an illegally altered resource area to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this chapter.
- B. The Conservation 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, subject to the constitutions and laws of the United States and the Commonwealth.
- C. The Commission shall have authority to enforce this chapter, its regulations, and permits issued thereunder by violation notices, non-criminal citations under M.G.L. Ch. 40 §21D, and civil and criminal court actions. Any person who violates provisions of this chapter may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.
- 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. Whoever himself or by his servant or agent, or as the servant or agent of any other person, firm, or corporation, violates any of the provisions of this chapter is subject to a fine as stated in Chapter 1, General Provisions, Article II, Noncriminal Disposition, of the Code of the Town of Williamstown. Each day of violation, after written notice, is considered a separate offense.

§ 38 - 9. Appeals

A decision of the Conservation Commission shall be reviewable in the superior court in accordance with M.G.L. Ch. 249 §4.

§ 38 - 10. Severability

If any provision of this chapter is declared invalid or unenforceable the other provisions shall not be affected thereby, but shall continue in full force and effect.

§ 38 - 11. Effective Date

The effective date of this chapter is January 1, 2009.

Noncriminal Disposition Warrant Article

Article __. To see if the Town will amend the following Sections of Chapter 1, General Provision, Article II, Noncriminal Disposition.

Section 1-4B (2). Add

Municipal Wetlands Protection (Chapter 38)

- First Offense - Warning
- Second Offense - \$50
- Third Offense - \$100
- Fourth and subsequent offense - \$200

Section 1-5, add:

Municipal Wetlands Protection (Chapter 38) - Conservation Agent