

3.31 – WETLANDS PROTECTION

PENALTIES FOR VIOLATION OF THE WETLANDS PROTECTION BYLAW

Criminal Enforcement: \$300.00 fine

Noncriminal Disposition: no provision made

A. Purpose

The purpose of this bylaw is to protect the wetlands, water resources, and adjoining land areas in the Town of Amherst by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including the following: public and private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution prevention, 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 bylaw”). This bylaw 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 (M.G.L. c. 131, § 40) and regulations thereunder (310 CMR 10.00 et seq.).

B. Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no Person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise Alter the following resource areas: a freshwater wetland; marsh; wet meadow; bog; swamp; isolated wetland; vernal pool; bank; reservoir; pond; river; perennial stream; intermittent stream; watercourse; water within water bodies; land under water bodies; land subject to flooding or inundation by groundwater, surface water, or storm flowage; and land abutting any of the aforesaid resource areas as set out in Section G(4) below (collectively the “resource areas protected by this bylaw”). Resource areas shall be protected whether or not the resource areas border surface waters.

C. Conditional Exceptions

- (1) The application and permit 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, telephone, telegraph, or other telecommunication services, or sanitary or storm sewers, provided that written notice has been given to the Commission prior to the commencement of work, and provided that the work

conforms to performance standards and design specifications in regulations adopted by the Commission.

- (2) The application and permit required by this bylaw shall not be required for work performed for normal maintenance or improvement of land which is lawfully in agricultural use at the time the work takes place.
- (3) The application and permit required by this bylaw shall not be required for 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 the work or within 24 hours after commencement; provided that the 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 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 by 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.
- (4) The application and permit required by this bylaw shall not be required for exemptions under the Rivers Act (Chapter 258 of the Acts of 1996) and 310 CMR 10.58.
- (5) Other than stated in this section, the exceptions provided in the Wetlands Protection Act (M.G.L. c. 131, § 40) and regulations (310 CMR 10.00 et seq.) shall not apply under this bylaw.

D. Applications for Permits (Notice of Intent or NOI) and Requests for Determination (RFD)

- (1) Written application shall be filed with the Commission to perform activities affecting resource areas protected by this bylaw. The permit application shall include information and plans 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.
- (2) The Commission in an appropriate case may accept as the permit application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act (M.G.L. c. 131, § 40) and regulations (310 CMR 10.00 et seq.).
- (3) Any Person desiring to know whether or not a proposed activity or an area is subject to this bylaw may request in writing a determination from the Commission. The

Request for Determination (hereafter RFD) shall include information and plans deemed necessary by the Commission.

- (4) At the time of a permit (NOI) or RFD 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 (M.G.L. c. 131, § 40) and regulations (310 CMR 10.00 et seq.). The filing fee shall be commensurate with the reasonable expenses incident to the licensing.
- (5) Upon receipt of a permit application or RFD, or at any point during the hearing process, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the “consultant fee.” The specific consultant services may include: performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis; and researching environmental or land use law.
- (6) The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. Any unused portion of the consultant fee shall be returned to the applicant unless the Commission decides at a public meeting that additional services will be required.
- (7) The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit application or RFD filed by a government agency.

E. Notice and Hearings

- (1) Any Person filing a permit application or a RFD with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested), or certificates of mailing, or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water.
- (2) The notice to abutters shall have enclosed a copy of the permit application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the Person providing the notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a Person requesting a determination is other than the owner, the request, the notice of the hearing, and the determination itself shall be sent by the Commission to the owner as well as to the Person making the request.

- (3) The Commission shall conduct a public hearing on any permit application or RFD, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the Town of Amherst.
- (4) The Commission shall commence the public hearing within 21 days from receipt of a completed permit application or RFD unless an extension is authorized in writing by the applicant.
- (5) The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.
- (6) The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (M.G.L. c. 131, § 40) and regulations (310 CMR 10.00 et seq.).
- (7) The Commission shall have the authority to continue the hearing to a date certain announced at the hearing or to an unspecified date, for reasons stated at the hearing, which may include the anticipated or requested receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in Section F, below. If the hearing is postponed to an unspecified date, the applicant is responsible for the expense of advertising the rescheduled hearing, the notice to appear 5 business days prior to the hearing, in a newspaper of general circulation in the Town. In addition, the applicant shall send written notice of the rescheduled hearing to any Person who has requested it.

F. Coordination with Other Boards

- (1) Any Person filing a permit application or RFD with the Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested), or certificates of mailing, or hand delivery, to the zoning board, planning board, health inspections, town engineer, and building commissioner.
- (2) A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality if the application or RFD pertains to property within 300 feet of that municipality. An affidavit of the Person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing, prior to final action.

G. Permits and Conditions

- (1) The Commission shall have the authority, after a public hearing, to determine whether a specific parcel of land contains or does not contain resource areas protected under this bylaw. If the Commission finds that no resource areas are present, it shall issue a negative determination.
- (2) If the Commission, after a public hearing, determines that the activities that are subject to the permit application, or the land and water uses that will result therefrom, are likely to have a significant individual or cumulative effect upon the resource area 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 that the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.
- (3) 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 significant or cumulative effects upon the resource area values protected by this bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.
- (4) Lands within 200 feet of rivers and within 100 feet of other resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within, or in some instances up to the full extent of the 200-foot or 100-foot buffer area, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw.
- (5) To prevent wetlands loss, the Commission shall require applicants to avoid wetlands Alteration wherever feasible; shall minimize wetlands Alteration; and, where Alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands on a two-to-one basis as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

- (6) 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 prior to the work. A permit may be renewed once for an additional 1-year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a 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.
- (7) For good cause the Commission may revoke or modify a permit or determination issued under this bylaw after public notice to the holder of the permit or determination, notice to the public and town boards, pursuant to V and VI above, and a public hearing.
- (8) The Commission in an appropriate case may combine the permit or determination issued under this bylaw with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act (M.G.L. c. 131, § 40) and regulations (310 CMR 10.00 et seq.).
- (9) No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to the work has been recorded in the registry of deeds or, if the land affected is 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 recorded.

H. Regulations

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw effective when voted and filed with the Town Clerk. The Commission may amend the rules and regulations after public notice and public hearing. Failure by the Commission to promulgate 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. Unless otherwise stated in this bylaw or in the rules and regulations promulgated under this bylaw, the definitions, procedures, and performance standards of the Wetlands Protection Act (M.G.L. c. 131, § 40) and Regulations (310 CMR 10.00 et seq.) as most recently promulgated shall apply.

I. Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw. (For additional definitions, see Section II of the Town of Amherst Wetland Protection Bylaw Regulations.)

“Alter” shall include the following activities when undertaken to, upon, within, or affecting resource areas protected by this bylaw:

- (1) Removal, excavation, or dredging of soil, sand, gravel, clay, minerals, or aggregate materials of any kind
- (2) Changing of preexisting drainage characteristics, flushing characteristics, 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 that may degrade water quality
- (5) Placing of fill, or removal of material, that 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 temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters
- (10) Activities, changes, or work that may cause or tend to contribute to pollution of any body of water or groundwater
- (11) Incremental activities that have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

“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 representative, agents, or assigns.

J. Security

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or Commonwealth board, agency, or official, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by 1 or both of the methods described below:

- (1) 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 be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.

- (2) By accepting 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. This method shall be used only with the consent of the applicant.

K. Enforcement

- (1) No Person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow these activities, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.
- (2) 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 examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.
- (3) The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Any Person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy the violations, or may receive a monetary penalty, or both.
- (4) Upon request of the Commission, the Town Manager and the Town Attorney 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.
- (5) Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

L. 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 permit application will not have unacceptable significant or cumulative effect upon the resource area 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.

M. Appeals

A decision of the Commission shall be reviewable in accordance with M.G.L. c. 249, § 4.

N. Relation to the Wetlands Protection Act

This bylaw is adopted under the Town’s Home Rule powers and may in some respects be more stringent than Commonwealth’s Wetlands Protection Act (M.G.L. c. 131, § 40) and regulations (310 CMR 10.00 et seq.) thereunder.

O. 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.

P. Effective Date

This bylaw shall become effective as provided in the Town’s Home Rule Charter.

3.32 – DEALING IN USED ARTICLES

PENALTIES FOR VIOLATION OF THE DEALING IN USED ARTICLES BYLAW

Criminal Enforcement: \$20.00 fine

Noncriminal Disposition: \$20.00 penalty (enforcement by: Police Officers)

- A. No person shall engage in the business of buying or selling second-hand articles within the Town unless duly licensed by the Board of License Commissioners.
- B. The Board of License Commissioners may from time to time make rules and regulations regarding the issuing of licenses, the fees to be paid, and the manner in which the business is to be conducted, as may seem advisable to the Commission, and in accordance with the laws of the Commonwealth and the Charter.

3.33 – REFUSE COLLECTION AND RECYCLABLE MATERIALS