

*Town of Dedham, MA
Wednesday, March 13, 2019*

Chapter 271. Wetlands Protection

[HISTORY: Adopted by the Town Meeting of the Town of Dedham as Ch. 28 of the 1996 By-laws; amended 11-18-2013 STM by Art. 16. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Stormwater management — See Ch. 246.

§ 271-1. Purpose.

- A. The purpose of the by-law is to protect the wetlands, related water resources and adjoining land areas in the Town of Dedham by controlling 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, shellfish, wildlife habitat, recreation, aesthetics, agriculture and aquaculture values (collectively, "the resource area values protected by this by-law").
- B. Nothing in this by-law is intended to replace the requirements of the Dedham Floodplain Zoning By-law. Any activity subject to the provisions of both by-laws must comply with the specifications of each.

§ 271-2. Definitions.

- A. The following definitions shall apply in the interpretation and implementation of this by-law.

ALTER

Includes, without limitation, the following activities when undertaken to upon, within or affecting resource areas protected by the by-law:

- (1) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (2) Changing of preexisting drainage characteristics, flushing characteristic 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 the water;
- (8) Destruction or alteration of plant life, including cutting of trees;

- (9) Changing water temperature, depth, flow rate, 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;
- (11) Application of pesticides or herbicides.
- (12) Destruction or alteration of wildlife habitat.
- (13) Any work within 200 feet of any river as defined in the Massachusetts Rivers Act of 1996, as may be amended from time to time.

COMMISSION

The Dedham Conservation Commission.

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 by-laws, administrative agency, public or quasi-public corporation or body, the Town of Dedham, and any other legal entity, its legal representatives, agents or assigns.

- B. All other definitions as set forth in G.L. c.131, § 40 and Massachusetts Regulation 310 CMR or as amended from time to time issued by the Department of Environmental Protection are hereby made part of this by-law.

§ 271-3. Jurisdiction.

- A. Except as permitted by the Conservation Commission or as provided in this by-law, no person shall remove, fill, dredge, or otherwise alter the following resource areas: any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; streams; creeks; beaches; lands under waterbodies; lands subject to flooding or inundation by groundwater or surface water (collectively the "resource areas protected by this by-law" listed in this section); lands within 100 feet of any of the aforesaid resource areas and areas within 200 feet of any waterbody which meets the definition of a "river" under the Massachusetts Wetlands Protection Act, G.L. c.131, § 40, Para. 14. Said resource areas need not border surface waters in order to qualify for protection.
- B. No person shall dump material of any type within any resource area protected by this by-law, any public right-of-way or upon any publicly owned land. The Conservation Commission shall have the authority to enforce the cleanup of any such illegal dumping.

§ 271-4. Exceptions.

- A. The permit and application required by this by-law 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, telegram or other communication services provided that written notice has been given to the Commission prior to the commencement of work. This exception shall not apply to the application of herbicides. The permit and application required by this by-law 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 the commencement of work.

- B. The permit and application of this by-law 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 the commencement of work or within 24 hours after commencement, provided that the following conditions are met:
- (1) The Conservation Commission or its agent certifies the work as an emergency project.
 - (2) The work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency.
 - (3) Within 21 days of commencement of an emergency project a permit application shall be filed for review as provided by this by-law.
 - (4) 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.
- C. Other than stated in this section, the exceptions provided in the Wetlands Protection Act shall not apply under this by-law.

§ 271-5. Application for permits and requests for determination.

- A. Written applications shall be filed with the Commission to perform activities regulated by this by-law affecting the resource areas protected by this by-law. The 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 by-law. No activities shall commence without receiving and complying with a permit issued pursuant to this by-law.
- B. Activities which require a Notice of Intent under this by-law but not under G.L. c.131, § 40 or as it may be amended from time to time may use the abbreviated Notice of Intent at the discretion of the Commission.
- C. The Commission may accept as the application and plans under this by-law the Notice of Intent and plans filed under the Wetlands Protection Act, G.L. c.131, § 40 or as it may be amended from time to time.
- D. Any person desiring to know whether or not proposed activity of an area is subject to the by-law, 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. In the absence of regulations, the same notice, plans, and specifications required to be filed by an applicant under G.L. c.131, § 40, or as it may be amended from time to time, will be accepted as fulfilling the filing requirements of this by-law.
- E. At the time of an application or request, the applicant shall pay a filing fee specified in the appended schedule located in § 271-16 of this by-law. This fee is in addition to that required by the Wetlands Protection Act, G.L. Ch. 131, Sec. 40, or as it may be amended from time to time. The Commission may waive the filing fee and costs and expenses for an application or request filed by a government agency or when the Commission determines that a project serves an overwhelming public purpose.

§ 271-6. Notice and hearings.

- A. Any person filing an application or a request for determination with the Commission shall at the same time give written notice thereof by certified mail or hand delivery to all abutters according to

the most recent records of the Assessors, including those across a traveled way or a body of water. 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. 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 the person making the request.

- B. The Commission shall conduct a public hearing on an application or request for determination, with written notice given at the expense of the applicant, Said notice shall be published at least five days prior to the hearing in a newspaper of general circulation in Dedham.
- C. The Commission shall commence the public hearing within 21 days from receipt of a completed application or request for determination.
- D. The Commission shall issue its permit or determination within 21 days of the close of the public hearing.
- E. The Commission in its discretion may combine its hearing under this by-law with any hearing required to be conducted under the Wetlands Protection Act, G.L. c.131, § 40, or as amended from time to time.
- F. 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 § 271-7 of this by-law. In the event 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.

§ 271-7. Coordination with other boards.

[Amended 11-17-2014 ATM by Art. 18]

Any person filing a permit application or a request for determination with the commission shall at the same time provide a copy thereof, by certified mail or hand delivery, to the Town Manager's Office, Board of Selectmen, Planning Board and other local departments and boards as deemed necessary by the Commission. The applicant shall have the burden of satisfying the Commission that copies were mailed or delivered. The Commission shall not take final action until such 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 receive any such comments and recommendations, and to respond to them at a hearing of the Commission prior to final action.

§ 271-8. Permits, determinations and conditions.

- A. If the Commission after a public hearing determines that the activities which are the subject of the application are likely to have an adverse or cumulative effect upon the resource areas protected by this by-law, 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 which the Commission deems necessary or desirable to protect those values, and all activities shall be carried out in accordance with those conditions. If it issues a permit (or Order of Conditions), the Commission shall record it in the Registry of Deeds of the Land Court and no work shall be undertaken until reimbursement of any costs is received by the Commission.
- B. The Commission is empowered to deny a permit for failure to meet the requirements of this by-law; for failure to submit necessary information or plans requested by the Commission; for failure to

avoid or prevent unacceptable adverse or cumulative effects upon the wetland values protected by this by-law; or where conditions are not adequate to protect those values, or if in the Commission's judgment such denial is necessary to preserve the environmental quality of the areas subject to this by-law.

- C. A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or 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 renewal is received in writing by the Commission at least 30 days prior to expiration.
- D. The Commission is also empowered to revoke a permit which it has issued for failure to perform the permitted work in accordance with any conditions set forth by the Commission in the issued permit or for violations of the Wetlands Protection Act, Massachusetts General Law, Chapter 131, Section 40, or as amended from time to time, this by-law, or any other Local, State or Federal law or regulation. The Commission shall hold a public hearing for the purpose of revoking a permit. Such a public hearing will be advertised at least five working days prior to the hearing in a newspaper of general circulation in Dedham.
- E. The Commission in an appropriate case may combine the permit or other action on an application issued under this by-law with the Order of Conditions issued under the Wetlands Protection Act.

§ 271-9. Regulations.

After public notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this by-law. 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 by-law.

§ 271-10. Security.

As part of a permit issued under this by-law, in addition to any security required by another 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 a proper bond or deposit of money or negotiable securities or the 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.

§ 271-11. Enforcement.

- A. The Commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this by-law and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.
- B. The Commission shall have the authority to enforce this by-law, its regulations and permits issued thereunder by violation notices, administrative orders, in accordance with § 1-6 of these By-laws, and/or civil and criminal court actions.
- C. Upon request of the Commission, the Town Manager, Board of Selectmen and the Town Counsel shall take legal action for the enforcement under civil law. Upon request of the Commission the Chief of Police shall take legal action for enforcement under criminal law.
[Amended 11-17-2014 ATM by Art. 18]

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

§ 271-12. 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 adverse or cumulative effect on the resource areas protected by this by-law. 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.

§ 271-13. Appeals.

A decision of the Commission shall be reviewable in the Superior Court in an action filed within 60 days thereof, in accordance with G.L. c.249, § 4.

§ 271-14. Relation to the wetlands protection act.

This by-law is adopted under the Home Rule Amendment of the Massachusetts Constitution and Home Rule statutes, independent of the Wetland Protection Act, G.L. c.131, § 40, or as it may be amended from time to time, and regulations thereunder.

§ 271-15. Severability.

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

§ 271-16. Filing fee schedule for permits for work within the resource areas or one-hundred-foot buffer zone to any resource area protected by this by-law.

A. Rules:

- (1) Permit fees are payable at the time of application and are non-refundable.
- (2) Permit fees shall be calculated by this Commission per schedule below.
- (3) Town, County, State and Federal projects are exempt from fees.
- (4) Failure to comply with the law after official notification shall result in fees twice those normally assessed.

B. Fees.

- (1) Minor project (house additions, tennis court, swimming pool utility work, etc. associated with existing single-family dwelling): \$100 + \$1/square feet of resource area disturbed.
- (2) Single-family dwelling, new construction: \$250 + \$1/square feet of resource area disturbed, 0.02/square feet land subject to flooding or 100 feet buffer zone or 200 feet riverfront area disturbed.

- (3) Subdivisions (road and utilities only): \$250 + \$2/feet of roadway sideline within a resource area protected by this by-law and within 100 feet of any resource area protected by this by-law or 200 feet of a river as defined under the Massachusetts Rivers act.
 - (4) Multifamily Dwellings, Commercial and industrial projects: \$500 + \$1/square feet of resource area disturbed, 0.02/square feet land subject to flooding or 100 feet buffer zone or 200 feet riverfront area disturbed.
 - (5) Permit extensions. No Permit Extensions shall be permitted for Wetland Delineations
 - (a) Single-family dwelling or minor project: \$50 per year (maximum three years).
 - (b) Other: \$100 per year (maximum three years).
 - (6) Request for determinations of applicability: \$50
 - (7) Wetland delineation and delineation review: \$0.50 per linear foot of resource area delineated, to a maximum of \$100 per existing single-family dwelling.
 - (8) Control of nuisance vegetation, including aquatic vegetation: \$100 per acre of resource area proposed to be treated, including total water resource area and associated buffer zone. Minimum fee of \$150.
- C. NOTE: These fees are in addition to the local portion of the state fee for Notices of Intent and Requests for Determination of applicability charged under G.L. c.131, § 40 and as it may be amended from time to time.
- D. The above fee schedule may be reduced by the Conservation Commission. Any such change shall be made at a posted public hearing of the Commission not less than 30 days prior to the date upon which the change is to be effective, and copies thereof shall be posted in a conspicuous location in the office of the Conservation Commission and with other lists of fees available in the office of the Town Clerk.