

Town of Dracut
Wetland Bylaw Regulations

1. Introduction

1.1 These regulations are promulgated by the Dracut Conservation Commission, hereafter referred to as the "Commission", pursuant to the authority granted to it under Town of Dracut, here after referred to as the "Town", General Bylaw Section 18, here after referred to as the "Bylaw". These regulations shall complement the Bylaw and shall have the force of law upon their effective date.

2. Purpose

2.1 The purpose of these regulations is to define and clarify the public review and decision-making process under the Bylaw by setting uniform standards and provisions for work conducted within Resource Areas (areas subject to protection under the Bylaw) in order to protect values protected by the Bylaw and for the filing and hearing of applications, issuance of permits, and the enforcement of the Bylaw and these regulations and permits issued thereunder.

3. Relationship with the Massachusetts Wetlands Protection Act

3.1 Except as specified herein, all of the standards, requirements, and procedures set forth in the Massachusetts Wetlands Protection Act (the "Act") [M.G.L. c. 131, § 40] and the Massachusetts Wetlands Protection Act Regulations (the "State Regulations") [310 CMR 10.00] are incorporated and made part of these Regulations as if restated herein. Where the Regulations differ from the State Regulations, these Regulations shall apply and those provisions shall supersede the State Regulations.

4. Procedures

4.1 *Determination of Applicability*

1. Any person who desires a determination as to whether the Bylaw applies to any land or work to be performed thereon may submit a written Request for Determination of Applicability (RDA) to the Dracut Conservation Commission. The request shall be sent by certified mail or hand delivered, and shall be in the form required under M.G.L. Ch. 131, s. 40 and 310 CMR 10.00 and shall include such additional information as the Commission may require to aid in the evaluation.
2. Within 21 days of receipt of the complete request, the Commission shall hold a hearing to consider the application filed under the Bylaw. Notice of the time and place of the public hearing at which the determination will be made shall be given by the Commission at the expense of the person making the request not less than 5 days prior to such meeting by publication in a newspaper of general circulation in Dracut. Within 21 days of closing the hearing, said determination shall be signed by a majority of the Commission, and copies thereof shall be sent by the Commission to the person making the request and to the property owner. Said determination shall be valid for 3 years from the date of issuance.
3. All changes made to a Request for Determination of Applicability shall be submitted to the Conservation Office no later than 7 calendar days in advance of the public

hearing. When revisions are received less than 7 calendar days in advance of the next meeting, the Commission will continue the hearing to a future meeting date to allow time for review.

4. The decision of the Commission may be appealed according to the provisions of M.G.L. Ch. 249, s. 4.

4.2 *Notice of Intent*

1. Application Procedures

4.2.1.1 Any person who proposes to do work that will remove, fill, dredge, build upon, or alter any Resource Area shall submit to the Commission a Notice of Intent (NOI), consisting of application materials required for a Notice of Intent under M.G.L. Ch. 131, s. 40 and 310 CMR 10.00 and containing such additional materials as the Commission may require to fully describe the proposed activity and its effect on the environment. All application materials shall be sent by certified mail or hand delivered to the Conservation Office, and sent by email to the Conservation Agent. The Commission shall provide written notice of such applications to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, Building Commissioner, and other Boards or Departments as the Commission deems appropriate. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality, if the application or RDA pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the NOI 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 consider but which shall not be binding on the Commission. Upon written request the applicant shall receive forthwith any comments and recommendations by the above boards or officials and may respond to the Commission in writing or at the hearing.

4.2.1.2 If the Conservation Agent determines the applicant to be incomplete, the Conservation Agent will (a) notify the applicant by email or mail within 10 days of receipt of the Notice of Intent of the additional information that will be necessary to render the Notice of Intent sufficiently complete for acceptance. The filing fee shall be returned and the 21-day review period shall not begin until a complete application is submitted; or (b) inform the applicant at or prior to the public hearing of the additional information required, and offer the applicant the opportunity to continue the public hearing so that the additional information can be submitted for review.

2. Public Hearings

4.2.2.1 Within 21 days of receipt of the complete request, the Commission shall hold a hearing to consider the application. Notice of the time and place of the public hearing at which the determination will be made shall be given by the Commission at the expense of the person making the request not less than 5 days prior to such meeting by publication in a newspaper of general circulation in Dracut. Within 21 days of closing the hearing, said determination shall be

signed by a majority of the Commission, and copies thereof shall be sent by the Commission to the person making the request and to the property owner. Said determination shall be valid for 3 years from the date of issuance.

- 4.2.2.2 Public hearings may be continued without the consent of the applicant to a date announced at the hearing; or with the consent of the applicant to an agreed-upon date which shall be announced at the hearing.
- 4.2.2.3 The applicant shall provide 7 paper copies of the plans to the Conservation Commission at the public meeting. All buffer zones on the plans shall be colored as follows: Green – BVW line; Yellow – 25 ft. from BVW; Red – 50 ft. from BVW; Orange – 100 ft. from BVW; Brown – 100 ft. and 200 ft. from Riverfront Area; Blue – streams; and Pink – Vernal Pools. These buffer zones shall be identified and labeled accordingly on plans. All resources shall be identified and labeled accordingly on the plans.

3. Revisions

- 4.2.3.1 All changes made to a Notice of Intent shall be submitted to the Conservation Office no later than 7 calendar days in advance of the public hearing. When revisions are received less than 7 calendar days in advance of the next meeting, the Commission will continue the hearing to a future meeting date to allow time for review.
4. All wetland replications must follow the most recent edition of the Massachusetts Inland Wetland Replacement Guidelines.
5. All house lots within 100 ft of BVW or 200 ft of Riverfront Area will require separate Notices of Intent from the subdivision road Notice of Intent.
6. Construction
 - 4.2.6.1 Prior to the construction of any building or structure, a silt fence must be installed, as well as the following work completed: roadway base coat cover; detention ponds; culverts; stream crossings, and all bridge work completed and approved by the Construction Inspector or Town Engineer.

4.3 *Order of Conditions*

1. Within 21 days of the close of the public hearing, or within such further time as the Commission and the applicant shall agree on, the Commission shall either:
 - (a) Make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge, build upon, or otherwise alter, is not significant to any of the interests identified in the Bylaw, and shall so notify the applicant, or
 - (b) Make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge, build upon, or otherwise alter, is probably significant to one or more of the interests identified in the Bylaw, and shall issue an Order of Conditions for the protection of said interest(s).
2. The Order of Conditions shall impose such conditions as are necessary to meet the performance standards set forth in Section 5 of these regulations and such additional conditions as are necessary for the protection of the interests identified in the Bylaw and MGL Ch. 131 S 40. The Order shall prohibit any work or any portion thereof that cannot be conditioned to meet such standards. The Order may impose

conditions on work outside Resource Areas when, in the opinion of the Commission, (1) such work will have a direct impact on a Resource Area by virtue of changes in the characteristics of storm drainage discharged to that Area from the property, or (2) such work is integrally connected with work to be undertaken within a Protected Resource Area and the only practical way to protect the interests of the Bylaw is to regulate the project as a whole.

3. The Order shall be signed by a majority of the Conservation Commission. The Order shall be valid for a period of three years, provided, however, that the Commission may issue an Order for a minimum of one year or a maximum of three years where special circumstances warrant and where those special circumstances are set forth in the Order.
4. Prior to the commencement of any work permitted or required by the Order, the Order shall be recorded in the Middlesex North Registry of Deeds or Land Court within the chain of title of the affected property. In the case of recorded land, the final order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the final order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be promptly sent to the Commission. If work is undertaken without the applicant first recording the Order, the issuing authority may revoke the Order of Conditions, may issue an Enforcement Order or may itself record the Order of Conditions at the owner's expense.

4.4 Appeals

1. Any person aggrieved by the decision of the Commission, whether or not previously a party to the proceeding, may appeal the decision according to the provisions of M.G.L. Ch. 249, s.4.

4.5 Extensions

1. The Commission may extend an Order once for up to 3 years. The request for an extension shall be made to the Commission in writing at least 30 days prior to expiration of the Order.
2. The Extension Permit shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate, and certification of recording shall be promptly sent to the Commission. If work is undertaken without the applicant so recording the Extension Permit, the Commission may issue an Enforcement Order or may itself record the Extension Permit at the owner's expense.

4.6 Certificates of Compliance

1. Upon written request by the applicant, the Commission shall issue a Certificate of Compliance within 21 days of receipt thereof provided that the activity or portions thereof described in the Notice of Intent and accompanying plans have been completed in compliance with the Order. If a project has been completed in accordance with plans stamped by a registered professional engineer, a written statement by such a professional person certifying substantial compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the Order shall accompany the request for a Certificate of Compliance.

2. Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by the Commission and/or its agent. If requested by the applicant, the site inspection shall be performed in the presence of the applicant or the applicant's agent.
3. If the Commission determines, after a review and inspection, that the work has not been done in compliance with the Order, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued within 21 days of receipt of the request, shall be in writing, and shall specify the reasons for denial.
4. If the final Order contains conditions which continue past the completion of the work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of such conditions shall continue. The Certificate shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Order.
5. The Certificate of Compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. Certification of recording shall be promptly sent to the Commission. Upon failure of the applicant to so record, the Commission may do so at the applicant's expense.

4.7 *Abbreviated Notices of Resource Area Delineation*

1. Any person requesting approval of a resource area delineation shall submit to the Commission an Abbreviated Notice of Resource Area Delineation (ANRAD) consisting of application materials required for an Abbreviated Notice of Resource Area Delineation under M.G.L. Ch. 131, s. 40 and 310 CMR 10.00 and containing such additional materials as the Commission may require to fully describe the resource areas on site and within 100 feet of the subject property. The ANRAD shall be sent by certified mail or hand delivered to the Conservation Office, and sent by email to the Conservation Agent.
2. A public hearing shall be held by the Commission within 21 days of the receipt of said Notice. Notice of the time and place of said hearing shall be given by the Commission at the expense of the applicant not less than 5 days prior to such hearing by publication in a newspaper of general circulation in Dracut. The applicant shall be responsible to notify all abutters by certified mail.
3. When considering an Abbreviated Notice of Resource Area Delineation during adverse weather conditions, it shall be left to the discretion of the Conservation Director as to whether field conditions are conducive to an accurate verification of the resource area delineation.
4. Within 21 days of closing the hearing, said determination shall be signed by a majority of the Commission, and copies thereof shall be sent by the Commission to the person making the request and to the owner. Said determination shall be valid for 3 years from the date of issuance.
5. The decision of the Commission may be appealed according to the provisions of M.G.L. Ch. 249, s. 4.

5. Performance Standards

1. Stormwater Management
 - 5.1.1.1

2. Structures in Floodplain

5.1.2.1 No building of any kind, or impervious surfaces or any other facility for the temporary or permanent storage of automobiles, trucks, or other material shall be located below the 100- year flood level without a valid Order of Conditions from the Conservation Commission.

3. Wildlife Habitat Impact and Mitigation

5.1.3.1 On any application for the approval of a project involving the disturbance of more than 20,000 square feet within a Protected Resource Area, the Commission may require (a) an analysis, by a competent wildlife biologist, of (1) the habitat value of the parcel of land to be disturbed and of the adjacent area, and (2) the impact of the proposed development on wildlife populations and habitat value, and (b) proposed measures to be taken during construction and during operation to mitigate these impacts.

5.1.3.2 An evaluation by the applicant of whether a proposed project will have an adverse effect on wildlife habitat beyond the permissible thresholds shall be performed by an individual with at least a master's degree in wildlife biologist or ecological science from an accredited college or university, or other competent professional with at least two years' experience in wildlife habitat evaluation.

5.1.3.3 Where project size warrants, the Commission may require the submission of the results of a quantitative habitat analysis, such as the Habitat Evaluation Procedures (HEP) developed by the U.S. Fish and Wildlife Service. For projects that may disturb less than 20,000 square feet, the Commission may require such an analysis on a case-by-case basis after an inspection and review of the property and project. The Commission may impose whatever conditions it deems necessary to limit impacts on wildlife, regardless of project size.

4. Buffer Zone and Bordering Vegetated Wetland, Vernal Pools, Rivers and Streams

5.1.4.1 New Construction

5.1.4.1.1 No setbacks for structures necessary for upland access where reasonable alternative access is unavailable, for wetland dependent structures such as storm drain outfalls, weirs, and the like, and for underground utilities.

5.1.4.1.2 Within 25 feet of a resource area, the Commission does not allow any disturbance of the land. Minor pruning or cutting of limbs, hazardous tree removal, hand dug tree planting, and hand dug fencing is allowed with approval of the Conservation Agent.

5.1.4.1.3 Within 50 feet of a resource area, the Commission does not allow building of new structures as defined in the Bylaw. The Commission may choose to grant a waiver if the applicant can demonstrate a hardship consistent with the criteria described in the Bylaw.

5.1.4.2 Existing Structures

5.1.4.2.1 Properties in existing non-compliance with the above will not be permitted to increase their degree of non-conformance

5.1.4.2.2 Existing disturbance or reconstruction within 25 feet of a resource area shall be reviewed on a case-by-case basis.

- 5.1.4.2.3 Additions or reconstruction of existing structures within 50 feet of a resource area shall be reviewed on a case-by-case basis.
- 5.1.4.2.4 All replications of wetlands shall be no less than three (3) times the altered number of square feet, unless the Commission determines that replication is impractical or would require the Applicant to incur excessive costs due to the unique features of the site and/or the difficulties of completing replication. When replication is completed, replication review is required from a wetland scientist with photos and a report, once per month, May through October, for 3 consecutive growing years.
- 5.1.4.2.5 Any activity or work within the 100 ft. buffer zone of any vernal pool (Vernal Habitat Zone), whether or not the vernal pool is certified, requires a Notice of Intent. Stormwater discharge to Vernal Pools and Vernal Habitat Zones is not permitted.
- 5.1.4.2.6 The Commission shall apply the performance standards of bank and land under water bodies and waterways in assessing a proposed project that would alter either a perennial or intermittent stream. A river and a perennial stream each have a two-hundred-foot riverfront area, and these areas are classified as resource areas subject to protection under the Bylaw. A stream shown as intermittent or not shown on the current USGS map or more recent map provided by the Department that has a watershed size less than one square mile is perennial if the stream has a watershed size of at least 0.50 square mile and has a predicted flow rate greater than or equal to 0.01 cubic feet per second at the 99% flow duration using the USGS Stream Stats method. When the USGS StreamStats method cannot be used because the stream does not have a mapped and digitized centerline and the stream has a watershed size of at least 0.50 square mile, and the surficial geology of the contributing drainage area to the stream at the project site contains 75% or more stratified drift, the Commission shall find such streams to be perennial. Stratified drift shall mean sand and gravel deposits that have been layered and sorted by glacial meltwater streams. Percentages of stratified drift may be determined using USGS surficial geologic maps, USGS Hydrological Atlases, Massachusetts Geographical Information System (MassGIS) surficial geology data layer, or other published or electronic surficial geological information from a credible source.

6. Changes in Submitted Plans

- 6.1 If at any time after a Determination of Applicability or Order of Conditions has been issued, there is a change in the proposed activity, the person on whose behalf the work is being done, in the case of a Determination, or the applicant, in the case of an Order, must notify the Commission, in writing, of the proposed changes. No work associated with these changes shall be done on the subject area until the Commission has reviewed the changes and issued its decision.

1. The Commission shall review these changes and determine one of the following:

1. The changes represent a substantial departure from the original proposal and the potential impacts of the new proposal on the interests identified in the Bylaw are sufficiently different from those of the original proposal as to require the filing of a new Request for Determination of Applicability or Notice of Intent;
2. The changes involve a substantial departure from the original proposal in only one or two limited respects, as determined by the Commission, and that the Commission will consider amending the original Determination or Order following submission of information on the proposed changes and their potential impacts on the interests identified in the Bylaw and following a public meeting or hearing and notice as required in Section 4 above; or
3. The changes represent an insignificant change in the original proposal and will cause no significant difference in the impact of the activity on the interests identified in the Bylaw, in which case the person proposing these changes may proceed in conformance with them.

2. The person making this request shall be notified by the Commission of its decision within 21 days of receipt of their request.

7. Enforcement

- 7.1 Any person who violates any provision of the Bylaw, the regulations promulgated under it, or any conditions of a valid Order of Conditions shall be punished by a fine of not more than \$300. Each day or portion thereof of continuing violation shall constitute a separate offense. The Bylaw, these regulations, and all Orders of Conditions may be enforced by the Commission, the Agent, and the Commission's designees.
- 7.2 The members and Agent of the Commission may enter upon privately owned land for the purpose of performing their duties under the Bylaw and these rules and regulations.
- 7.3 When the Commission determines that an activity is in violation of the Bylaw, these regulations, or a final Order of Conditions, the Commission may issue an Enforcement Order. Violations include, but are not limited to:
 1. Failure to comply with a final Order, such as failure to observe a particular condition or time period specified in the Order;
 2. Failure to complete work described in a final Order, when such a failure causes damage to the interests identified in the Bylaw; or
 3. Failure to obtain a valid Order of Conditions or Extension Permit prior to conducting an activity subject to regulation under the Bylaw.
 4. An Enforcement Order issued by the Commission shall be signed by a majority of the Commission. In a situation requiring immediate action, an Enforcement Order may be signed by a single member or Agent of the Commission, provided said Order is ratified by a majority of the members at the next scheduled meeting of the Commission.

8. Security

- 8.1 The Commission may require, as a permit condition, that the performance and observance of the Order of Conditions be secured by one of the following methods:
 1. By a bond or deposit of money or negotiable securities in an amount and form determined by the Commission to be sufficient to secure the completion of all conservation measures specified in their Order of Conditions: and, the Commission

may require that the applicant specify the time within which such construction shall be completed.

- The penal sum of any such bond shall bear a direct and reasonable relationship to the expected costs, including the effects of inflation, necessary to complete the sub-work. Such amount or amounts shall be from time to time reduced as it is, in the determination of the Commission, necessary to reflect the actual expected costs of the work remaining to be completed.
- 2. By a covenant, executed and duly recorded by the owner of record, running with the land whereby such conservation measures, as are stated in the Order of Conditions, shall be provided before any lot may be built or conveyed.
- 8.2 The deposit of monies, negotiable securities, bond or covenant shall, in the case of the bond, be given to the Town Treasurer, and, in the case of a covenant, be recorded in the Registry of Deeds or Land Court, as the case may be, within 14 days of the granting of the Order of Conditions.

9. Waiver of Regulations

- 9.1 Strict compliance with these Regulations may be waived when, in the judgement of the Commission, such action would serve a substantial public interest or when strict compliance would result in the following, but not limited to, severe economic, physical, legal, contextual hardship far greater in magnitude than the public interest to be served. In the latter case, the Commission may require that compensatory or mitigating measures be taken, even at an offsite location, to protect the public interest in the Protected Resource Area to be removed, filled, dredged, built upon, or altered.

10. Severability

- 10.1 If any provision of any part of these rules and regulations or the application thereof is held to be invalid, such invalidity shall not affect any other provision of these rules and regulations.

11. Effective Date

- 11.1 These rules and regulations shall take effect upon adoption and shall apply to all applications filed on or after that date and any procedures or work conducted pursuant to such filings. They shall not apply to any application which was filed prior to said effective date.