

## **TOWN OF PAXTON WETLANDS PROTECTION BYLAW**

The Town voted to amend the General Bylaw.

Art. 19 (Annual Town Meeting – May 1, 2017)

Art. 9 (Annual Town Meeting – May 7, 2018)

### **I. Purpose**

The purpose of this bylaw is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Paxton by controlling activities likely to have a significant or cumulative effect on these resource areas, deemed important to the community (collectively, the “resource area values protected by this bylaw”) including but not limited to the following:

- public or private water supply,
- storm damage prevention,
- prevention and control of pollution,
- water quality,
- recreation values,
- wildlife habitat, rare species habitat including rare plant and animal species, and
- flood control,
- agriculture,
- erosion and sedimentation control.

This bylaw is intended to utilize the Home Rule authority of this municipality so as to protect the resource areas under the Massachusetts Wetlands Protection Act (M.G.L. Ch.131 §40, as amended; the Act) to a greater degree and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and regulations thereunder (310 CMR 10.00.) specifically in the following ways:

- (a.) create a wetland setback area: 15-foot setback of no disturbance and 30-foot setback for all permanent structures, (See Section VII. Permits & Conditions.)
- (b.) increase the required replication ration from 1.5:1 to 2:1, (See VIII. Replication, Replacement, Mitigation.)
- (c.) implement fines for enforcement and increase fees for after-the-fact filings, (See Section IX. Enforcement and VI. Application and Fees.)

### **II. Jurisdiction**

Except as permitted by the Conservation Commission no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, certified vernal pools, springs, banks, reservoirs, lakes, ponds of any size, beaches, dunes, and lands under water bodies; intermittent streams, brooks and creeks; lands adjoining these resource areas out to a distance of 100 feet, known as the buffer zone; perennial rivers, streams, brooks and creeks; lands adjoining these resource areas out to a distance of 200 feet, known as the riverfront area; lands subject to flooding or inundation by groundwater or surface water; and lands subject to flooding (collectively the “resource areas protected by this bylaw”).

### **III. Definitions**

For terms not defined in this Bylaw or Regulations promulgated thereunder, definitions shall be as found in the Massachusetts Wetlands Regulations: 310 CMR 10.00 et seq. (for terms defined there); or normal and customary use of the words (for terms not otherwise defined).

### **IV. Regulations**

After public notice and public hearing, the Conservation Commission shall put into effect rules and regulations to carry out the purposes of this bylaw, effective when voted and filed with the town clerk.

Failure by the Commission to put such rules and regulations into effect shall not act to suspend or invalidate the effect of this bylaw. At a minimum these regulations shall clarify the terms defined in this bylaw, define additional terms not inconsistent with the bylaw, define additional exemptions and exceptions and impose filing and consultant fees.

#### **V. Exemptions, Exceptions and Deviations for hardship**

Other than stated in this bylaw, the exceptions provided in the Massachusetts Wetlands Protection Act (G.L. Ch. 131 §40, as amended) and regulations (310 CMR 10.00) shall apply under this bylaw.

In acting on an application for a permit under this Bylaw, the Commission may grant permission for work closer than the minimum distances set forth in this bylaw. The Commission shall only grant deviations that are allowable pursuant to the Bylaw, as well as the Massachusetts Wetlands Protection Act, and Regulations. In considering a deviation, no deviation from the Bylaw shall be allowed except:

- (a) in the case of a single family dwelling, structure and development in existence as of July 19, 2018 (the original date of issuance of these Regulations); or
- (b) when a wetlands permit application was filed for said single family dwelling, structure and development on or before July 19, 2018, and said wetlands permit was subsequently granted; or
- (c) when the Commission finds that denial of proposed work could constitute a regulatory taking; or
- (d) the structure, improvement or activity is a component of any project to provide public access to and within the resource area after completion of the project.

#### **VI. Applications and Fees**

The Commission will accept as the application and plans under this bylaw any application and plans filed under the Massachusetts Wetlands Protection Act and regulations.

At the time of an application, the applicant shall pay a filing fee specified in the Regulations of the Commission. An increased fee for after-the-fact filings shall be specified in the Regulations. The fee is in addition to that required by the Wetlands Protection Act and Regulations.

#### **VII. Permits and Conditions**

The Commission in an appropriate case may combine the decision issued under this bylaw with the permit, Determination of Applicability (DOA), Order of Resource Area Delineation (ORAD), or Certificate of Compliance (COC) issued under the Wetlands Protection Act and regulations.

Amendments to permits, DOAs, or ORADs shall be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.

Unless the applicant convinces the Commission that the area or part of a wetland setback area described below may be disturbed without harm to the values protected by the bylaw:

- 1. No foundation, building, road, sidewalk, or other permanent structure shall be placed within thirty (30) feet of any resource area.
- 2. Furthermore, no grading, filling, excavation, removal of trees or other vegetation or other construction activity shall be allowed within fifteen (15) feet of said resource areas.

#### **VIII. Replication, Replacement, Mitigation**

To prevent wetland resource area loss, the Commission shall require applicants to avoid wetland alteration wherever feasible; to minimize wetland alteration; and, where wetland alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or

require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication. Accordingly, the Conservation Commission discourages any plan or project which requires replication. The amount of replacement area shall be calculated at a ratio of at least 2:1.

#### **IX. Enforcement**

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, 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.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under Massachusetts General Law, 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 such violations, or may be fined, or both.

Any person who violates any provision of this Bylaw or Regulations thereunder or permits issued thereunder shall receive a written notice for the first violation. The penalty for each subsequent violation shall be one hundred dollars (\$100.00) per violation. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the Bylaw, Regulation or permit violated shall constitute a separate offense. The Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in Massachusetts General Law Chapter 40 Section 21D, which has been adopted by the Town.

#### **X. 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 Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

#### **XI. Appeals**

The applicant, the owner if not the applicant, any person aggrieved by a Determination or Order, any owner of land abutting the land on which the work is to be done, or any ten residents of the town may appeal a decision of the Commission under this Bylaw in writing, with a copy given to the Commission, in an action filed with the Superior Court within sixty (60) days of the decision being issued to the applicant, as per M.G.L., Chapter 249, Sec. 4.

#### **XII. 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, approval or determination which previously has been issued.