

Chapter 171, WETLANDS PROTECTION

[HISTORY: Adopted by the Annual Town Meeting of the Town of Littleton 5-5-2003 by Art. 11. Amendments noted where applicable.]

§ 171-1. Purpose and jurisdiction. [Amended 5-6-2013 ATM, Art. 24]

- A. The purpose of this chapter is to protect the wetland and water resources of the Town of Littleton by regulating activity in or near wetland resource areas. Conditions shall be imposed by the Littleton Conservation Commission (the Commission) after a public hearing at which the Commission determines that the area on which the proposed work is to be done is significant to public or private water supply, to groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish, to the protection of wildlife habitat or the protection of fisheries (collectively, the "interests protected by this chapter").
- B. Except as permitted by the Littleton Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, or alter any bank, freshwater wetland, marsh, meadow, bog, or swamp bordering any creek, river, stream, pond, or lake, or land under said waters or any land subject to flooding or riverfront area (collectively, the "areas subject to protection").
- C. The Commission may establish, in its rules and regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, and other work limits for protection of such areas subject to protection.
- D. Any activity proposed or undertaken within the "buffer zone" as defined in G.L. c. 131, § 40 and 310 CMR 10.02(2)(b) or areas subject to protection (collectively the "resource area") which, in the judgment of the Commission, will remove, fill, dredge or alter an area subject to protection under this chapter is subject to regulation under the chapter and requires the filing of a request of determination (RFD) or Notice of Intent (NOI).
- E. Any activity proposed or undertaken outside the areas subject to protection and outside the buffer zone is not subject to regulation under this chapter and does not require the filing of an NOI unless and until that activity actually alters an area subject to protection under this chapter. In the event that such activity has in fact altered an area subject to protection under this chapter, the Commission shall impose such conditions on the activity or any portion thereof as it deems necessary to contribute to the interests protected under this chapter.

§ 171-2. Applications.

- A. Any person who proposes to perform activities affecting the above referenced resource areas protected by this chapter shall submit a NOI to the Commission, which

bears the signature of the applicant and the landowner for work on the subject property. Application under this chapter may be identical in form to the Notice of Intent filed pursuant to G.L. c. 131, § 40, and shall be sent by certified mail or hand delivered to the Commission. The written application shall include such information and color plans as may be necessary to describe such proposed activity and its effect on the resource areas.

- B. Any person who desires a determination as to whether this chapter applies to land or work that may affect areas subject to protection may submit an RFD to the Commission. The RFD application may be identical in form to a Request for Determination filed pursuant to G.L. c. 131, § 40. If the person submitting the RFD is not the owner, the applicant shall send a copy of the RFD by certified mail, return receipt requested, to the owner, with a copy to the Commission. The Commission requires submitted plans to be in color.
- C. Each NOI or RFD filed shall be assigned a unique identification number (hereinafter, "file number") to facilitate record keeping by the Commission. Said file number may be identical to that assigned by the Massachusetts Department of Environmental Protection.
- D. Any person filing a NOI or a RFD with the Commission shall give at the same time written notice thereof, by certified mail (return receipt requested) or hand delivery to the owner and all abutters at their mailing addresses shown on the most recent Town Assessor's records.

§ 171-3. Fee/charges.

- A. At the time of the submission of the NOI application or RFD, or application for certificate of compliance, the applicant shall pay a filing fee as specified in this chapter. The fee is in addition to that required by the Wetlands Protection Act, M.G.L. c. 131, § 40, and the Regulations, 310 CMR 10.00. This fee is assessed to compensate the town for its anticipated costs and expenses of processing the application.
- B. Fees shall be set by the Conservation Commission with the approval of the Board of Selectmen pursuant to M.G.L. c.40, §22F. [Amended 11-4-2013 STM, Art. 15]
- C. In addition to any filing fee imposed by this Bylaw, the applicant shall reimburse the reasonable costs and expenses borne by the Commission for specific expert engineering, consulting, and town counsel services deemed necessary by the Commission in order to issue a decision on the application. The consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, including wildlife habitat evaluations, hydrogeology and drainage analysis. [Amended 11-8-2005 STM, Art. 13]
- D. The Commission may require services of a consultant and/or an engineer or town counsel at any point in its deliberations prior to a final decision. The exercise of discretion by the Commission in making its determination to require the services of a consultant shall be based upon its reasonable finding that additional information

acquirable only through outside engineering or consultant services would be necessary for the making of an objective decision. [Amended 11-8-2005 STM, Art. 13]

- E. The Commission shall hire and pay for said engineering and/or consultant services and the applicant shall reimburse the Town such services and costs, including reimbursement to the Town for town counsel services. [Amended 11-8-2005 STM, Art. 13]
- F. The reimbursement of costs and expenses necessary to render a decision shall constitute a municipal charge pursuant to M.G.L. c. 40, § 58. [Amended 11-8-2005 STM, Art. 13]
- G. Said municipal charge (reimbursement) shall be paid by the applicant within 30 calendar days of receipt of a written statement of charges from the Town of Littleton. Payment shall be made to the Town of Littleton and deposited in the general fund pursuant to M.G.L. c.44, § 53. Failure to pay the charge shall constitute a lien against the property.
- H. The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit application or RFD filed by a department or officer of the Town of Littleton.

§ 171-4. Hearings and meetings.

- A. For an RFD, the Commission shall hold a public meeting within 21 calendar days of its receipt. Notice of the time and place of the meeting shall be given by the Commission at the expense of the applicant, not less than five days prior to the meeting, by publication in a newspaper of general circulation (in Littleton) and by mailing a notice to the applicant and to the owner by certified mail (return receipt requested).
- B. For an NOI, the Commission shall hold a public hearing within 21 calendar days of its receipt. Notice of the time and place of the hearing shall be given by the Commission at the expense of the applicant, not less than five days prior to the hearing, by publication in a newspaper of general circulation (in Littleton) and by mailing a notice to the applicant and to the owner by certified mail (return receipt requested).
- C. A public hearing and public meetings may be continued as follows:
 - (1) Without the consent of the applicant to a date announced at the hearing, within 21 calendar days of receipt of the notice of intent;
 - (2) With the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing; or
 - (3) With the consent of the applicant for a period not to exceed 21 calendar days after the or the occurrence of a specified action.

§ 171-5. Permits and conditions.

- A. For an RFD, the Commission shall issue a determination of applicability within 21 calendar days of receipt of said application. If, after the public meeting, the Commission determines that the area is significant to the interests protected by this chapter, the Commission shall issue a positive determination and request that the applicant file an NOI. If the Commission determines that the area which is the subject of the application is NOT significant to the interests protected by this chapter, or that the proposed activity does not require the imposition of conditions, it shall issue a negative determination. When the person requesting a determination is other than the owner, notice of the determination shall be sent to the owner as well as to the requesting person by certified mail (return receipt requested).
- B. For an NOI, the Commission shall issue an order of conditions within 21 calendar days of the close of the public hearing for said application. The Commission shall impose such conditions as will contribute to the protection of the interests protected by this chapter and all work shall be done in accordance with those conditions. The order shall prohibit any work or any portion thereof that cannot be conditioned to protect said interests. If the Commission finds that the information submitted is not sufficient to describe the site, the work or the effects of the work on the interests protected by this chapter, it may issue an Order prohibiting the work. The order shall specify the information which is lacking and why it is necessary. If the Commission makes a determination that the proposed activity does not require the imposition of such conditions, the applicant shall be notified of the Commission's decision within 21 days after said hearing. Such order or notice that the proposed activity does not require conditions shall be signed by the majority of the Commission and a copy thereof shall be sent forthwith to the applicant by certified mail (return receipt requested).
- C. An order of conditions shall be valid for three years unless specifically stated otherwise. The Commission may renew an order of conditions for an additional period not to exceed three years. If renewal of an order of conditions is requested, it must be received in writing by the Commission at least 30 calendar days prior to the expiration date of the order.
- D. No work proposed in any application shall be undertaken until the order of conditions, with respect to such work, issued by the Commission has been recorded in the Registry of Deeds or, if the land affected thereby be registered land, in the registry section of the Land Court for the district wherein the land lies, and until the holder of the order of conditions certifies in writing to the Commission that the order has been so recorded.
- E. Within 21 days of the receipt of a written request, by the applicant or the owner of the property, for a certificate of compliance with an order of conditions, the Commission shall grant such request if the activity, or portions thereof, complies with the order of conditions. The certificate of compliance shall state that the activity, or portions thereof, has been completed in accordance with such order.

- F. No conditions shall be imposed, nor shall the Commission, in reference to this chapter, render any determination unless the Commission meets with a quorum present.

§ 171-6. Exemptions.

The provisions of this chapter shall not apply to work exempted under the provisions of the Wetlands Protection Act, M.G.L. c. 131, § 40, and the Regulations, 310 CMR 10.00.

§ 171-7. General provisions, presumptions, performance standards, rules and regulations, and statute of limitations. [Amended 5-6-2013 ATM, Art. 24]

- A. Except as otherwise provided in this chapter or in the Rules and Regulations promulgated in accordance with this chapter, the provisions set forth in M.G.L. c.131, § 40, 310 CMR 10.03(1) through 10.03(6)(Presumptions), 310 CMR 10.04 (Definitions), and 310 CMR 10.51 through 10.60 (Performance Standards) shall be used for the interpretation and implementation of this chapter.
- B. After due notice, a public hearing, and approval by the Board of Selectmen, the Commission shall promulgate rules, regulations and procedures for compliance with this Bylaw, a copy of which shall be filed with the Town Clerk. Failure by the Commission to promulgate such rules, regulations or procedures or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effects of this Bylaw.
- C. The limitations on actions and prosecutions as set out in M.G.L. c.131, §§ 40 and 91 shall be applicable to this chapter.

§ 171-8. Enforcement; violations and penalties.

- A. The filing of an NOI or RFD shall constitute implied permission for the Commission to enter upon the land for the purpose of performing the duties triggered by this chapter and M.G.L. c.131, § 40.
- B. The Commission shall have the authority and duty to enforce this chapter and order of conditions issued hereunder by enforcement orders, civil and criminal court actions.
- C. When the Commission determines that violation of this chapter has occurred, it may request the Board of Selectmen and the Town Counsel to take legal action for enforcement under civil law. In addition, the Commission may request the Chief of Police or other authorities to take legal action for enforcement under criminal law.
- D. Any person who violates any provision of this chapter may be punished by a fine of not more than \$300 per offense. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the Bylaw, regulations, or order of conditions violated shall constitute a separate offense.

- E. In the alternative to criminal prosecution, the Commission may elect to utilize the noncriminal disposition procedure set forth in M.G.L. c. 40, § 21D, in which case the penalty shall be as follows:
- (1) First offense: \$25.
 - (2) Second offense: \$100.
 - (3) Third and subsequent offenses: \$300.
- F. No person shall remove, fill, dredge, or alter any area subject to protection under this chapter without the required authorization, 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 an Enforcement Order issued pursuant to this chapter. Each day such violation continues constitutes a separate offense, except that any person who fails to remove unauthorized fill or otherwise fails to restore illegally altered land to its original condition after giving written notification of said violation to the Commission shall not be subject to additional penalties unless said person thereafter fails to comply with an enforcement order or order of conditions.

§ 171-9. Severability.

The invalidity of any provision or feature of this chapter shall not affect the validity of any other provision or feature not manifestly inseparable therefrom.