



Town of Concord
Natural Resources Commission
141 Keyes Road
Concord, MA 01742

50-foot No Build Zone Policy

Adopted May 20, 1994
Last Revised June 2, 2021

It is presumed that individual and cumulative alterations of land within 50 feet of wetland resource areas will have significant impacts on wetlands. It is therefore the Natural Resources Commission's policy to prohibit any structure in the 50-foot No Build Zone except where there are exceptional circumstances, where no other practical alternative exists, and where satisfactory mitigation takes place to offset any alteration. This document is intended to explain the purpose and implementation of the 50-foot No Build Zone Policy, and to provide guidance for exceptional circumstances in which a structure may be permitted.

Purpose of Policy

The Natural Resources Commission (NRC) has found that activities in close proximity to wetland resource areas can negatively affect a wetland's ability to protect the public interests identified in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131 §40) and Concord Wetlands Bylaw. Impacts include, but are not limited to, disturbance of natural vegetation along the wetland edge, pollutant run-off, fill material, and other substances deposited into wetland resource areas, stockpiling or dumping of materials or debris which migrate over time into wetlands, and wildlife habitat disturbance, including to nesting sites and migratory corridors that are important to wetland-dependent species. As a result, the NRC strongly discourages all new structures within 50 feet of wetlands. Protecting this portion of the 100-foot buffer zone is intended to reduce impacts to adjacent wetland resource areas.

The Policy

As used herein:

"50-foot No Build Zone" (NBZ) shall mean the area 25 to 50 feet from jurisdictional wetland resource areas where new structures are permitted only in exceptional circumstances.

"Structure" shall mean any manmade component whether above, on, or below ground. It may include, but not be limited to, any new surface or sub-surface component such as buildings, foundations, sheds, decks, garages, barns, tennis courts, underground tanks and irrigation systems, swimming pools, and driveways, due to its potential to alter wetland resource area values. Structures are further defined as framework, structural retaining walls, tanks, pipes, utilities, any component of septic or stormwater facilities, or the like. Patios will be considered as structures on a case-by-case basis. Lawn furniture, minimal signage, and temporary children's structures such as sandboxes, swingsets, and tree houses are not considered "structures" for the purpose of these regulations. Water dependent structures such as docks and piers, and fences that are raised at least 6 inches off the ground surface, are not subject to this setback requirement. Demarcation markers required by NRC are also excluded from this definition.

In acting upon Notices of Intent and Determinations of Applicability, the NRC will presume that any new structure in the NBZ will have a significant adverse effect on the wetlands, and such

proposals shall not be permitted unless the applicant demonstrates that (1) such activity would not adversely affect the interests identified in the Act or the Bylaw, or (2) public benefits, such as health or safety, outweigh any such alteration. The applicant shall have the burden of proving by a preponderance of the evidence that a proposed structure in the NBZ will not have significant or cumulative effects on the resource areas values protected by the Massachusetts Wetlands Protection Act and the Concord Wetlands Bylaw.

Existing structures are not permitted to increase their degree of non-conformance. Alteration consisting of work outside the footprint of the principal existing structure within the 50-foot No Build Zone may be permitted to the extent that such alteration does not result in a reduction in the minimum distance that exists between the existing structure and the wetland.

Applicants seeking permission to place or extend a structure in the 50-foot No Build Zone shall submit a waiver request to the satisfaction of the Commission that:

- i. There are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with this Policy. In demonstrating this condition, an applicant shall submit an Alternatives Analysis that evaluates all possible designs that allow work to meet setback requirements with written justification regarding why work in the NBZ is necessary and shall include, at a minimum, the following information:
 - a) Degree, date of, and scale of past alterations in the buffer zone
 - b) Slope of the buffer zone
 - c) Species composition of vegetation in the 25-foot and 50-foot buffer zones
 - d) Ecological integrity of the adjacent wetlands
 - e) Importance of the buffer zone to wildlife utilizing the wetland
 - f) Any ecological benefits arising from proposed mitigation, such as removal of invasive vegetation or creation of enhanced wildlife habitat
 - g) Any public benefits arising from the proposed activity
 - h) Photographs of the area to be disturbed; and
- ii. Avoidance, minimization, and mitigation have been employed to the maximum extent practicable. When encroachment of proposed structures into the NBZ is unavoidable, the applicant must mitigate the encroachment by naturally revegetating an area within the 50-foot No Build Zone 10 times greater than the encroachment, or restoring an area within the 25-foot No Disturb Zone at a 5:1 ratio of new structure within the 50-foot NBZ; and
- iii. the project, considered in its entirety, will result in a net benefit of resource area values; or
- iv. The waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property to avoid a decision that so restricts use of the property as to constitute an unconstitutional taking without compensation

Upon a written request for a waiver, the Commission shall consider whether the waiver is consistent with the intent and purpose of this Policy. The Commission shall act on the request for a waiver and shall provide to the applicant its written decision. A request for a waiver shall be made in writing and be included in a request for approval (e.g. Notice of Intent), and shall include the information outlined above. The issuance of a waiver is discretionary.

Activities identified as minor activities in the WPA Regulations and Wetlands Bylaw will be given consideration as minor activities and are exempt from the policy. All activity within the 100-foot buffer zone will continue to be reviewed on an individual case-by-case basis.