



# Town of Concord

Office of the Town Clerk  
22 Monument Square  
P.O. Box 535  
Concord, Massachusetts 01742-0535

2010 Annual Town Meeting  
April 26, 27, 28 and 29

## WETLANDS BYLAW REGULATIONS

**ARTICLE 59.** Upon a **MOTION** duly made and seconded, it was

**VOTED:** To adopt regulations under the approved non-zoning Wetlands Bylaw, as follows:

### **SECTION 1: GENERAL PROVISIONS**

These Regulations are promulgated by the Concord Natural Resources Commission (the Commission) under the authority of the Town of Concord Wetlands Bylaw, Article 43 of 2009 Town Meeting, effective September 10, 2009 (the Bylaw).

The purpose of these Regulations is to effectuate the purpose of the Bylaw and provide guidance for work in sensitive areas. The failure of these Regulations to address all aspects of the Bylaw, or a legal declaration of their invalidity, shall not act to suspend or invalidate the effect of the Bylaw. 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.

Definitions and terms as defined in the Bylaw are used consistently herein.

### **SECTION 2: PROTECTION OF BUFFER ZONES**

The first 25 feet of a Buffer Zone defines the Buffer Zone's inner edge and is designated a No Disturbance Zone. The remaining 75 feet of the Buffer Zone is designated a Limited Disturbance Zone.

#### **2.1 No Disturbance Zone**

##### **2.1.1 *Presumption of Significance***

In accordance with §7.4e of the Bylaw, the Commission shall presume that any activity or alteration within the No Disturbance Zone has a negative impact on the resource area values and thus is prohibited. This presumption may be rebutted where an applicant provides clear and convincing evidence that the resource area values would not be adversely affected, whether individually or cumulatively by the proposed activity. This may be achieved through a qualitative analysis examining each resource area value as it currently exists and as it is projected to exist with and without the proposed activity going forward. In the event that the Commission finds that the presumption has been overcome, it shall make a written determination to this effect, stating its grounds.

Activities listed in §7.4.e.(ii) are not subject to this presumption.

##### **2.1.2 *Performance Standards***

(i) Alterations, including but not limited to grading, landscaping, removing of vegetation, filling, excavating, operation of vehicles or machinery, and paving, shall not be permitted in a No Disturbance Zone, except as allowed under the Bylaw.

(ii) Structures, including but not limited to buildings, porches, decks, pools, sheds, fences, and driveways, shall not be constructed or placed within a No Disturbance Zone. Lawfully located structures in existence before this Bylaw are permitted to remain. Expansions and additions are not permitted. Reconstruction of lawfully located structures may be permitted when no other practicable alternative exists.

(iii) Notwithstanding any of the foregoing prohibitions, the Commission may allow certain activities or structures in the 25-foot No Disturbance Zone by waiver, as provided in paragraph 4.1.1 of these Regulations, when no other practicable alternative exists. Petitions for a waiver shall be included in writing in the Notice of Intent filed under the Bylaw.

## **2.2 Limited Disturbance Zone**

In accordance with §7.4.a of the Bylaw, the Commission shall presume the protection of the Limited Disturbance Zone is significant to preserving the resource area values protected by the Bylaw. This presumption is rebuttable and may be overcome upon a clear showing that the Buffer Zone does not play a role in the protection of those interests. In the event that the Commission finds that the presumption has been overcome, it shall make a written determination to this effect, stating its grounds.

Alternatively, applicants can demonstrate by a preponderance of the evidence that any activity or alteration within the Limited Disturbance Zone, when considered with proposed mitigation measures, will have no adverse effect upon the resource area values identified in the Bylaw.

## **SECTION 3: PROTECTION OF CERTIFIED VERNAL POOLS AND VERNAL POOL HABITAT**

In accordance with §7.4.d of the Bylaw, an applicant may rebut the presumption that certified vernal pools and vernal pool habitat provide essential habitat functions. Any formal evaluation should be conducted by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act Regulations (310 CMR 10.00). The Commission shall allow limited alterations to areas that, in their existing condition and use, do not serve a significant habitat function, or the Commission may allow limited alterations along with certain prescribed performance standards that protect the resource area values. In the event that the Commission finds that the presumption has been overcome, it shall make a written determination to this effect, stating its grounds.

Alternatively, if an applicant can show by a preponderance of the evidence that the certified vernal pool and its habitat does not and cannot provide habitat for vernal pool species, then the presumption is rebutted. Within areas of lawfully existing lawns, landscaped area, or driveways as of September 10, 2009, this presumption may be overcome by evidence that the lawns, landscaped area, or driveways were lawfully existing prior to September 10, 2009. Such evidence may include, but is not limited to, aerial photographs or land based photographs that clearly show the area in question. In the event that the Commission finds that the presumption has been overcome, it shall make a written determination to this effect, stating its grounds.

## **SECTION 4: WAIVERS AND MITIGATION**

### **4.1 Waivers**

The performance standards for work in wetland resource areas are defined to ensure that the interests protected by the Bylaw are adequately protected. The Commission recognizes that, in certain situations, a waiver of a specific performance standard may be appropriate for a particular project when the waiver is consistent with the intent and purpose of the Bylaw and Regulations.

Upon a written request for a waiver, the Commission shall consider whether the waiver is consistent with the intent and purpose of the Bylaw and these Regulations. 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 in the sections below. The issuance of a waiver is discretionary.

#### 4.1.1 *Waivers for 25-Foot No Disturbance Zone*

The Commission may grant a waiver from these Regulations for an alteration of a 25-foot No Disturbance Zone in situations where no practicable alternative exists that provides less impact to the resource area values. The Commission may grant a waiver of a performance standard and impose such additional or substituted mitigation requirements, commensurate with the scope of the project's impacts, as it deems necessary.

The applicant shall provide information 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 these Regulations;
- (ii) avoidance, minimization, and mitigation have been employed to the maximum extent feasible; and
- (iii) the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

#### 4.1.2 *Waivers for Certified Vernal Pools and Vernal Pool Habitat*

The Commission may grant a waiver from these Regulations for an alteration of a portion of a certified vernal pool or vernal pool habitat where no practicable alternative exists that would have less impact to the habitat values and where the functioning of the vernal pool as breeding area for species dependent on vernal pools is not impaired.

In addition to the waiver requirements under §4.1.1 of the Regulation, the applicant shall provide information to the satisfaction of the Commission that:

- (i) there are no alternatives to the proposed project with less harmful effects on vernal pool habitat;
- (ii) evidence that sufficient vernal pool habitat will remain; and
- (iii) evidence that likely use and maintenance of the altered area will have no detrimental effect on water quality of the certified vernal pool or quality of the vernal pool habitat.

### 4.2 **Mitigation**

In cases where a waiver is granted, the Commission may require mitigation measures. These mitigation measures shall be commensurate with the scope of the project's impacts and shall be implemented to offset potential impacts to wetland resource area(s). The mitigation must maintain or improve the natural capacity of a resource area to achieve the interests protected by the Bylaw.

The Commission may require that mitigation be implemented before permitted alterations are initiated.

## **SECTION 5: PROCEDURES:**

### **5.1 Application For Permits**

#### 5.1.1 *Application Forms*

Applications under the Bylaw may be combined with applications under the Wetlands Protection Act using the DEP forms current at the time of filing with a supplemental local form maintained by the Division of Natural Resources.

5.1.2 *Checklists*

The Division of Natural Resources shall maintain submission checklists for each application type to guide applicants in submittal requirements. These checklists identify administrative details for submittals including, but not limited to, plan scale and size requirements, number of copies required, and submission deadlines.

5.1.3 *Completeness*

A permit application is not complete until all required application materials have been received by the Commission as listed on the appropriate submission checklist, and specified in the applicable permit application instructions. No hearing or meeting for the proposed project will be scheduled until all required application materials have been received. The Commission may, at any time during the review process, require the submission of extra copies of the application and/or plans.

5.1.4 *Revisions, amendments, and supplemental information*

All revisions, amendments, or supplemented information introduced or referred to by the applicant during the course of the public hearings on the application shall be provided in a form that is consistent with the checklist requirements, including updated application pages as necessary and number of copies.


**5.2 Administrative Approvals**

For projects that are considered minor in scope and that would predictably have no measurable or cumulative impact upon the resource areas protected by the Bylaw in accordance with §7.1 of the Bylaw, the applicant shall submit a written request for an administrative approval to the Natural Resources Director. Such a request shall include, at a minimum, a plan sufficient to show the location of the proposed activity, and a narrative describing the activity. Such requests shall include information as necessary to demonstrate that a proposed activity meets the criteria identified in §3 or §7.1 of the Bylaw. The Natural Resources Director shall determine on a case by case basis what additional information is necessary to administratively approve a project. Administrative approval requests may also be made by applicants that wish to confirm that an activity is exempt under the Bylaw. The Natural Resources Director shall issue a decision in writing. With the exception of hazard tree removal, or other projects requiring immediate action, the Natural Resources Director shall provide the Natural Resources Commission with a list of pending administrative approvals prior to issuing approval.

Without limiting the generality of the above paragraph, an appeal may be taken to the Commission by any person including an officer or Board in the Town of Concord aggrieved by reason of inability to obtain, or by issuance of, an administrative approval from any administrative officer of the Town of Concord in violation of Article 43 of Town Meeting 2009 or any Bylaw of the Town of Concord adopted thereunder.

Passed by Declared Majority Vote  
April 29, 2010

A True Copy Attest:



Anita S. Tekle  
Town Clerk