

Town of Franklin, MA
Thursday, July 11, 2019

Chapter 181. Wetlands Protection

[HISTORY: Adopted by the Town Council of the Town of Franklin 8-20-1997 by Bylaw Amendment 97-340-R.^[1]

GENERAL REFERENCES

Zoning — See Ch. 185.

Subdivision of land — See Ch. 300.

[1] *Editor's Note: This Bylaw Amendment repealed former Ch. 181, Wetlands Protection, adopted 5-4-1976 ATM by Art. 30.*

§ 181-1. Purpose.

- A. The purpose of this chapter is to preserve and protect the floodplains and wetlands and adjoining lands in the Town of Franklin by regulating and controlling activities deemed to have significant or cumulative effect upon the functions and characteristics of such floodplains and wetlands including, but not limited to, the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, fisheries, shellfish, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture and recreation.
- B. This chapter is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional functions and characteristics, with additional standards and procedures stricter than those of the Wetlands Protection Act, MGL c. 131, § 40, and Regulations thereunder, 310 CMR 10.00.

§ 181-2. Jurisdiction.

- A. No person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter any of the resource areas listed below without filing written notice of the intention to do so with the Commission in accordance with the provisions set forth in this chapter and without receiving and complying with the permit, and provided that all appeal periods have lapsed, unless the Commission shall have determined that this chapter does not apply to the activity proposed.
- B. Except as permitted by the Conservation Commission or as provided in this chapter, 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; vernal pools; banks; reservoirs; lakes; ponds of any size; beaches; intermittent streams; lands under water bodies; lands within 100 feet of any of the aforesaid wetland or floodplain areas; lands subject to flooding or inundation by groundwater or surface water; rivers and streams; and lands within 200 feet of the mean annual high-water line of any river or stream.

- C. The above-referenced areas are the resource areas protected by this chapter. Said resource areas shall be protected whether or not they border surface waters.

§ 181-3. Presumption of significance.

- A. Floodplains, lands within 100 feet of other resource areas and within 200 feet of rivers and perennial streams, the resource areas, are presumed significant to the protection of functions and characteristics of these areas because activities undertaken in close proximity have a high likelihood of adverse impact upon them, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within aforesaid one-hundred- or two-hundred-foot area, unless the applicant convinces the Commission with clear convincing evidence that the area or part of it may be disturbed without harm to the functions and characteristics protected by this chapter.
- B. A subsurface disposal system which complies with the requirements of Title 5 or more stringent regulations of the Board of Health shall have the same presumption as set forth in the Massachusetts Wetlands Protection Act Regulations [310 CMR 10.03(3) and Wetlands Protection Program Policy Title 5 (March 1995)]. The presumption applies only to the discharge from a sewage disposal system and not to the impacts from construction of the system. The Commission may apply the standards set out in the above-referenced regulations and policy when reviewing an application for construction of a sewage disposal system.

§ 181-4. Definitions.

- A. The following definitions shall apply in the interpretation and implementation of this chapter:

ALTER

The following activities when undertaken upon or within resource areas protected by this chapter:

- (1) Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind.
- (2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics.
- (3) Drainage or other disturbance of water level or water table.
- (4) Dumping, discharging or filling with any material which may degrade water quality.
- (5) Placing of fill, or removal of material, which would alter elevation.
- (6) Driving of piles, erection or repair of buildings or structures of any kind. Existing homes will not have to file a notice of intent for normal household repairs and maintenance. However, if the footprint of the house and/or yard changes, a notice of intent will be required.

- (7) Placing of obstructions or objects in water.
- (8) Destruction of plant life including cutting of trees.
- (9) Changing temperature, biochemical oxygen demand or other physical, biological or chemical characteristics of any waters.
- (10) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.
- (11) Incremental activities which have, or may have, a cumulative impact on the resource areas protected by this chapter.

BANK

The land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

PERSON

Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof to the extent subject to Town bylaws, administrative agency, public or quasi-public corporation or body, this municipality and any other legal entity, its legal representatives, agents or assigns.

RARE SPECIES

Includes, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

RIVER or STREAM

A naturally flowing body of water that empties to any ocean, lake or other river or stream and which flows throughout the year.

VERNAL POOL

A confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer and which is free of adult fish populations, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. Where there is a conflict of opinion as to the extent of the vernal pool or the extent of the habitat area, the applicant may submit an opinion certified by a registered professional engineer and/or a competent professional with at least two years experience in wildlife habitat evaluation, following the procedures set forth in MGL c. 131, § 40 and 310 CMR 10.00, as to the probable extent of the pool and the habitat area.

- B. Except as otherwise provided in this chapter or in regulations of the Commission, the definitions of terms in this chapter shall be as set forth in the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00.

§ 181-5. Applications for permits; requests for determinations.

A. Permit.

- (1) Written application shall be filed with the Commission to perform activities affecting resource areas protected by this chapter. The permit application shall include such information and plans as are deemed necessary by the Commission to describe

proposed activities and their effects on the resource areas protected by this chapter. No activities shall commence without receiving and complying with a permit issued pursuant to this chapter.

- (2) The Commission in an appropriate case may accept as the permit application and plans under this chapter the notice of intent and plans filed under the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00.
- B. Request for determination. Any person desiring to know whether or not a proposed activity or an area is subject to this chapter may in writing request a determination from the Commission. Such a request for determination (RFD) shall include information and plans as are deemed necessary by the Commission.
- C. Filing fee. At the time of a permit application or RFD, or application for certificate of compliance, the applicant shall pay a filing fee specified in Chapter **82**, Appendix A, of the Code of the Town of Franklin. The fee is in addition to that required by the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00.
- D. Consultant fee.
- (1) Upon receipt of a permit application or RFD, or at any time during the hearing process, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the consultant fee. The specific consultant services may include, but are not limited to, performing or verifying the accuracy of a resource area survey and delineation, analysis of resource area functions and characteristics, including wildlife habitat evaluations, hydrogeologic and drainage analysis and environmental or land use law.
 - (2) The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. The applicant shall pay the fee which shall be put into a revolving fund which may be drawn upon by the Commission for specific consultant services approved by the Commission at one of its public meetings.
 - (3) The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision.
 - (4) The Commission shall return any unused portion of the consultant fee to the applicant unless the Commission decides at a public meeting that other action is necessary. Any applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.
 - (5) Regulations for hiring outside consultants under MGL c. 44, § 53G:
[Amended 4-15-2015 by Bylaw Amendment 15-746]
 - (a) As provided by MGL c. 44, § 53G, the Franklin Conservation Commission may impose upon and collect from applicants under the Massachusetts Wetlands Protection Act and the Franklin Wetlands Bylaw and Regulations reasonable fees for the employment of outside consultants, including, but not limited to, scientists, engineers, surveyors or consultants of any other kind engaged by the Conservation Commission, for services deemed necessary by the Commission to adequately review an application or request submitted to the Conservation Commission and to provide on-site inspectional services while an approved project is under construction.

- (6) The project cost means the estimated, entire cost of the project including, but not limited to, building construction, site preparation, landscaping and all site improvements. The consultant fee shall be paid pro rata for that portion of the project cost applicable to those activities within resource areas protected by this chapter. The project shall not be segmented to avoid being subject to the consultant fee. The applicant shall submit estimated project costs at the Commission's request, but the lack of such estimated project costs shall not avoid the payment of the consultant fee.

- E. Waiver. The Commission may waive the filing fee, consultant fee and costs and expenses for a permit application or RFD filed by a government agency.

§ 181-6. Notice and hearings.

[Amended 4-7-2010 by Bylaw Amendment 10-642]

- A. Notice of intent (NOI), abbreviated notice of intent (abbreviated NOI), abbreviated notice of resource area delineation (ANRAD) or any modification to these permits.

- (1) Any person filing a permit application with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice to abutters shall have enclosed a copy of the permit application or request, with plans, or shall state where copies may be examined and obtained by abutters.
- (2) All hearing notices shall also comply with the public hearing requirements set out at § 4-15 of the Code of the Town of Franklin.
- (3) An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission prior to the date of the hearing.
- (4) The Commission shall conduct a public hearing on any permit application, with written notice given at the expense of the applicant, 10 calendar days prior to the hearing, in a newspaper of general circulation in the municipality.
- (5) The Commission shall commence the public hearing within 21 days from receipt of a completed permit application unless an extension is authorized in writing by the applicant.
- (6) The Commission shall issue its permit in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.
- (7) The Commission in an appropriate case may simultaneously hold its hearing under this chapter with the hearing conducted under the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00.
- (8) The Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion or comments and recommendations of the boards and officials listed in § 181-7.

- B. Request for determination of applicability (RFD).

- (1) The Commission shall conduct a public meeting on any RFD application, with written notice given at the expense of the applicant, 10 calendar days prior to the hearing, in a newspaper of general circulation in the municipality.
- (2) The Commission shall commence the public meeting within 21 days, from receipt of a completed RFD application unless an extension is authorized in writing by the applicant.
- (3) The Commission shall issue its determination in writing within 21 days of the close of the public meeting thereon unless an extension is authorized in writing by the applicant. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.
- (4) The Commission in an appropriate case may simultaneously hold its public meeting under this chapter with the public meeting conducted under the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00.
- (5) The Commission shall have authority to continue the meeting to a certain date announced at the meeting, for reasons stated at the meeting, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion or comments and recommendations of the boards and officials listed in § 181-7.

§ 181-7. Coordination with other boards.

- A. Any person filing a permit application with the Commission shall provide a copy thereof at the same time to the DPW Director. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality if the application pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Franklin Conservation Commission.
[Amended 9-9-2015 by Bylaw Amendment 15-751]
- B. 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 take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations and to respond to them at a hearing of the Commission, prior to final action.

§ 181-8. Permits and conditions.

- A. If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result therefrom are likely to have an individual or cumulative effect upon the resource area functions and characteristics protected by this chapter, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those functions and characteristics, and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative effects of loss, degradation, isolation and replication of protected resource areas throughout the community and the watershed resulting from past activities (permitted and exempt) and foreseeable future activities.

- B. The Commission is empowered to deny a permit for failure to meet the requirements of this chapter; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant adverse effects upon the resource area functions and characteristics protected by this chapter; and where no conditions are adequate to protect those functions and characteristics. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.
- C. Conditions.
- (1) In the case of areas within 200 feet of rivers and streams, no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this chapter, has proved by a preponderance of the evidence that there is no practicable alternative to the proposed project with less adverse effects, and, as well, should there be no such practicable alternative, that such activities, including proposed mitigation measures, will have no impact on the resource area functions and characteristics protected by this chapter. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purposes, logistics, existing technology, costs or the alternatives and overall project costs.
 - (2) To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design and monitoring to assure success, because of the high likelihood of failure of replication.
 - (3) In the case of areas within 100 feet of a resource area, or within 200 feet of a perennial stream, no permit issued hereunder shall permit the installation of any individual septic disposal system or any component thereof, unless the applicant, in addition to meeting the otherwise applicable requirements of this chapter, has proved by a preponderance of the evidence that there is no practicable alternative to the proposed installation with less adverse effects, and such installation will have no impact on the resource area(s) functions and characteristics protected by this chapter. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purposes, logistics, existing technology, costs of the alternatives and overall project costs.
[Added 10-21-1998 by Bylaw Amendment 98-391-R]
- D. Term of years. A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed up to three consecutive times, each for an additional one-year period, provided that the request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely or until permanent protection is in place and shall apply to all owners of the land.
[Amended 10-7-2009 by Bylaw Amendment 09-634]
- E. Revoke or modify. For good cause, the Commission may revoke or modify a permit or determination issued under this chapter after notice to the holder and mortgage holder

thereof, abutters and Town boards, pursuant to §§ **181-6** and **181-7**, and a public hearing.

- F. Merge with order of conditions. The Commission, in an appropriate case, may combine the permit or determination issued under this chapter with the order of conditions or determination of applicability issued under the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00.
- G. Recording. No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies and until the holder of the permit certifies in writing to the Commission that the permit has been recorded.

§ 181-9. Regulations.

- A. After public notice and a hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this chapter. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this chapter.
- B. At a minimum, these regulations shall define key terms in the chapter not inconsistent with the chapter and procedures governing the amount and filing of fees.

§ 181-10. Performance guaranties.

As part of a permit issued under this chapter, in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured by one, or in part by one and in part by another, of the methods described below.

- A. Security.
 - (1) The Commission may require the applicant to furnish a performance guaranty by a deposit of money or passbook in the name of the Town of Franklin, in an amount to be determined by the Commission to be sufficient to cover the performance of some or all of the conditions required by the permit. Letters of credit are unacceptable.
 - (2) When the conditions, in whole or in part, for which the performance guaranty has been provided have been satisfactorily completed, the Commission may reduce the amount of the security. When all of the conditions have been satisfactorily completed, the Commission shall return the remaining security, along with accumulated interest.
- B. Covenant. By a covenant, executed and simultaneously recorded with the permit in the registry of deeds, running with the land to the benefit of the municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used with the consent of the applicant.

§ 181-11. Enforcement.

- A. No person shall remove, fill, dredge, build upon, degrade or otherwise alter resource areas protected by this chapter 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 chapter.
- B. The Commission, its agents, officers and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.
- C. The Commission shall have authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, administrative orders and the initiation of civil and criminal court actions. Any person who violates provisions of this chapter 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.
- D. Upon request of the Commission, the Town Administrator and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.
- E. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- F. In addition to any other remedies available under any law or this chapter, any person who violates any provision of this chapter, regulation, permit or administrative order issued thereunder may be fined not more than \$300 for each offense. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the chapter, regulations, permits or administrative orders violated shall constitute a separate offense.
- G. In a specific case, the Commission may issue citations pursuant to MGL c. 40, § 21D under the noncriminal disposition procedure established in the Town of Franklin. When so enforced, the penalties for wetland violations of any type described in this chapter shall be:
 - (1) First offense: \$75.
 - (2) Second offense: \$150.
 - (3) Third offense: \$250.
 - (4) All subsequent offenses: \$300.
- H. The enforcing officers in the noncriminal disposition procedure shall be members of the Conservation Commission or its agents.

§ 181-12. 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 significant adverse effect upon the resource area functions and characteristics protected by this chapter. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

§ 181-13. Appeals.

A decision of the Commission shall be reviewable in the Superior Court in accordance with MGL c. 249, § 4.

§ 181-14. Conditional exemptions.

A. (Reserved)^[1]

[1] *Editor's Note: Former Subsections A, B, C and E were repealed 3-4-1998 by Bylaw Amendment 98-358-R.*

B. (Reserved)

C. (Reserved)

D. **Emergency.** The application and permit required by this chapter shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project, a permit application shall be filed with the Commission for review as provided by this chapter. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

E. (Reserved)

§ 181-15. Relation to the Wetlands Protection Act.

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00, thereunder.

[1] *Editor's Note: Former § 181-14, Conditional exemptions, was repealed 3-4-1998 by Bylaw Amendment 98-358-R. This bylaw also provided for the renumbering of §§ 181-15 through 181-17 as §§ 181-14 through 181-16.*

§ 181-16. Severability.

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

§ 181-17. Effective date.

The requirements of this chapter shall apply to any notice of intent submitted after the date of adoption. This Zoning Chapter shall become effective according to the provisions outlined in

the Franklin Home Rule Charter.

