

**TOWN OF HOLDEN
CONSERVATION COMMISSION
WETLAND BYLAW**

(Amended May 20, 2020)

I. Purpose

The purpose of this bylaw is to protect the wetlands, water resources and adjoining land areas in Holden by controlling activities determined by the Holden Conservation Commission likely to have significant or cumulative effect upon resource area values, including but not limited to the following:” public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention and storm flowage, water quality, water pollution control, fisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, and recreation values deemed important to the community (collectively, the “resource area values protected by this bylaw”). This bylaw is intended to utilize the Home rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (MGL Chap 131, Sec. 40) and Regulations thereunder (310 CMR 10.00).

II. Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, 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; vernal pools; swamps; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; land underwater bodies; lands subject to flooding or inundation by groundwater or surface water; and lands abutting any of the aforesaid resource areas as set out in Section VII (Collectively the “resource areas protected by this bylaw”). Said resource areas shall be protected whether or not they border surface waters.

III. Conditional Exceptions

The application and permit required by this bylaw shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone telegraph, or other telecommunication services provided that written notice has been given to the Commission prior to the commencement of work, and provided that the work conforms to performance standards and design specified in regulations adopted by the Commission.

The application and permit required by this bylaw will not be required for work performed for normal maintenance or improvement of land which is lawfully in agricultural use at the time the work takes place.

The application and permit required by this bylaw 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 bylaw;. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

Other than stated in this section, the exceptions provided in the Wetlands Protection Act (MGL Ch. 131, Sec. 40) and Regulations (310 CMR 10.00) shall not apply under this bylaw.

IV. Applications for Permits and Requests for Determination

Written application shall be filed with the Commission to perform activities affecting resource areas protected by this bylaw. 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 bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the permit application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act (MGL Ch. 131 Sec. 40) and Regulations (310 CMR 10.00).

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a Request for Determination of Applicability (RDA) shall include information and plans as are deemed necessary by the Commission.

Upon receipt of a permit application or RDA, or at any point during the hearing process, the Commission is authorized to require an applicant to pay a fee for 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 resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydro-geologic and drainage analysis; and researching environmental or land use law.

The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. If a revolving fund for consultant expenses and fees is authorized by the town meeting. Or by any general or special law, the applicant's fee shall be put into such revolving fund, and the Commission may draw upon that fund for specific consultant services approved by the Commission at one of its public meetings.

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. 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 Mass. General Laws. The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit application or RDA filed by a government agency.

V. Notice and Hearings

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 as certified by Board of 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 and any property owner of land crossed by an easement or right-of-way serving the property which is the subject of the application. The notice to abutters shall have enclosed a copy of the permit application, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of the hearing, and the determination itself shall be set by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any permit application or RDA, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the municipality.

The Commission shall commence the public hearing within 21 days from receipt of a completed permit application or RDA unless the applicant authorizes an extension in writing. The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon unless the applicant authorizes an extension in writing. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (MGL Ch. 131 Sec 40) and Regulations (310 CMR 10.00).

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 board and officials listed in Sect VI.

VI. Coordination with Other Boards and Agencies

Any person filing a permit application or RDA with the Commission shall submit all required information to the Holden Conservation Commission by certified mail (return receipt request) or hand delivery. One copy of the complete application package must also be delivered,

by certified mail or hand delivery, to the local office of the Department of Conservation and Recreation (DCR) a copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality, if the application or RDA 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 Commission. 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.

VII. Permits and Conditions

If the Commission, after a public hearing, determined that the activities which are subject to the permit application or the land and water uses which will result therefrom are likely to have a significant individual or cumulative effect upon the resource area values protected by this bylaw, the Commission within 21 days of the closing 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 values, and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation and replication of protection resource areas throughout the community and watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications; performance standards, and the requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this bylaw; and where no conditions are adequate to protect these values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

Lands within 200 feet of rivers, ponds and lakes, and lands within 100 feet of other resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, 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 vegetation cover within either the 200 foot or 100 foot area, as applicable, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw.

In the review of areas within 200 feet of rivers and streams, no permit issued thereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirement of this bylaw, has proved by a preponderance of the evidence that (1) there is no

practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. 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 purpose (e.g., residential, institutional, commercial, or industrial purpose), logistics existing technology, costs of the alternatives, and overall project costs.

To prevent wetlands loss, the Commission shall require applicant to avoid wetland 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, due to the high likelihood of failure.

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 upon approval of the Commission, provided that a 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.

For good cause the Commission may revoke or modify a permit or determination issued under this bylaw after notice to the holder of the permit or determination, notice to the public, abutters, and town boards, pursuant to Sec. V and Sec. VI, and a public hearing.

The Commission in an appropriate case may combine the permit or determination issued under this bylaw with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act (MGL Ch. 131, Sec. 40) and Regulations (310 CMR 10.00).

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 with the Worcester County 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. The holder of the permit can either certify in writing to the Commission that the permit has been recorded, or submit a stamped copy of the recorded document reflecting the book and page of recording to the Commission.

VIII. Regulations

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw effective. Failure by the Commission to promulgate such rules and regulations or a legal declaration of the invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

At a minimum, these regulations shall define key terms in this bylaw and establish basic performance standards not inconsistent with the bylaw and procedures governing the amount and filing of fees.

IX. Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw:

The term “alter” shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind.
- B. The change of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics.
- C. Drainage or other disturbance of water level or water table.
- D. Dumping, discharging or filling with any material which may degrade water quality
- E. Placing of fill or removal of material, which would alter elevation
- F. Driving of piles, erection or repair of buildings, or structures of any kind
- G. Placing of obstructions or objects in water
- H. Destruction of plant life including cutting of trees
- I. Changing temperature, biochemical oxygen demand or other physical, biology, or chemical characteristics of any waters
- J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater
- K. Incremental activities, which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw

The term “person” shall include 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.

The term “rare species” shall include, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened, or of special concern by the Mass. Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

The term “vernal pool” shall include, in addition to scientific definitions found in the Conservation Commission Regulations, and the Wetlands Protection Act any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult fish populations, and provides essential breeding and rearing habitat functions for

amphibian, reptile or other Vernal Pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the Resource Areas for Vernal Pools shall be the mean annual high-water line defining the depression and an additional one-hundred feet, the jurisdictional buffer shall consist of an additional one hundred feet from the resource area.

Except as otherwise provided in this bylaw or in regulations of the Commission, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act (MGL Ch. 131, Sec. 40) and Regulations (310 CMR 10.00)

X. Security

As part of a permit issued under this bylaw and 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) to be secured wholly or in part by one or more of the methods described below:

A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.

B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded at the Worcester County District Registry of Deeds by the owner of record, running with the land to the benefit of this 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 only with the consent of the applicant.

XI. 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 by law. 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 bylaw 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 State and the Commonwealth.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative and civil and criminal court actions. Any person who violate provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violation, or may be fined, or both.

Upon request of the Commission, the Select board and the Town Counsel may take legal action for enforcement under civil and criminal law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law.

Municipal board and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violate any provision of this bylaw, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than \$300.00 per day. 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 bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedure set forth in MGL Ch. 40, Sec. 21D, which has been adopted by the town in Sec. 19 of the general bylaws.

XII. 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 Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

XIII. Appeals

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

XIV. Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (MGL Ch. 131, sec. 40) and Regulations (310 CMR 10.00) thereunder.

XV. 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 or determination, which previously has been issued.