

Town of Northbridge
Wetlands Protection Bylaw

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Section 7-700

Section 7-701 Purpose

The purpose of this chapter is to protect the wetlands, water resources, flood prone areas and adjoining upland areas in the Town of Northbridge by controlling activities deemed by the Northbridge Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following:

- public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention, water quality, prevention and control of pollution, fisheries, wildlife habitat, rare species habitat including rare plant and animal species, recreation, agriculture and aquaculture value (collectively, the “wetland values protected by this chapter.”)

This bylaw is intended to utilize the Home Rule authority of Northbridge so as to protect the resource areas under the Wetlands Protection Act (G.L. Ch.131 §40; the Act) to a greater degree, to protect additional resource areas beyond the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those recognized in the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and regulations thereunder (310CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant bylaws of the Town of Northbridge.

Section 7-702 Jurisdiction

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, springs, banks, beaches, reservoirs, lakes, ponds of any size, and lands under water bodies;
- intermittent streams, brooks and creeks;
- land adjoining these resource areas out to a distance of one hundred (100) feet known as the buffer zone;
- perennial rivers, streams, brooks and creeks;
- lands adjoining these resource areas out to a distance of two hundred (200) feet, known as the riverfront area;
- and lands subject to flooding or inundation by groundwater or surface water;

(collectively, the “resource areas protected by this chapter.”) Said resource areas shall be protected whether or not they border surface waters.

The jurisdiction of this bylaw shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04.

Section 7-703 Exemptions and Exceptions

- A. The permit and application required by this chapter shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and 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 the structure or facility is not substantially changed or enlarged, provided that written notice has been given to the Commission prior to commencement of the work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
- B. The application and permit required by this chapter shall not apply 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 twenty-four (24) hours after commencement;
 - provided that the Conservation 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 Conservation Commission for the limited purposes necessary to abate the emergency; and
 - provided that within twenty-one (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.

- C. The application and permit required by this chapter shall not be required for work performed for normal maintenance or improvement of land in agricultural use as defined by the Wetlands Protection Act Regulations at 310 CMR 10.04.
- D. The application and permit required by this chapter shall not be required for single-family home lots in existence prior to the adoption of this chapter.
- E. Other than stated in this section, the exceptions provided in the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00) shall not apply under this chapter.

Section 7-704 Permit Applications; Requests for Determination

- A. Written application shall be filed with the Commission to perform activities affecting resource areas protected by this chapter. The 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.

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- B. The Commission in an appropriate case may accept as the application and plans under this chapter the Notice of Intent any application and plans filed under the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00), but the Commission is not obliged to do so.
- C. 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 of Applicability (RDA) or Abbreviated Notice of Resource Area Delineation (ANRAD) filed under the Act shall include information and plans as are deemed necessary by the Commission.
- D. At the time of an application or request the applicant shall pay a filing fee specified in Regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act, (G.L. Ch 131 §40) and Regulations. The Commission may waive the filing fee and costs and expenses for an application or request filed by a government agency and shall waive them for a request for determination filed by a person having no financial connection with the property which is the subject of the request.
- E. Pursuant to G.L Ch. 44 §53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services. Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole discretion of the Commission. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.
- F. The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing.
- G. The applicant may appeal the selection of an outside consultant to the Board of Selectmen, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant shall make such an appeal in writing, and must be received within ten (10) business days of the date that request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the application.

Section 7-705 Notices and Hearings

- A. Any person filing a permit or other application or a Request for Determination of Applicability (RDA) or Abbreviated Notice of Resource Area Delineation (ANRAD) or other request with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivery to all abutters according to the most recent records of the Board of Assessors, including owners of land directly opposite on any public or private street or those across a traveled 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 shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters shall enclose a copy of the application or request, 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 sent by the Commission to the owner as well as to the person making the request.
- B. The Commission shall conduct a public hearing on any permit application, RDA or ANRAD with written notice given, at the expense of the applicant, at least five (5) working days prior to the hearing, in a newspaper of general circulation in the Town of Northbridge.
- C. The Commission shall commence the public hearing within twenty-one (21) calendar days from receipt of a completed permit application, RDA or ANRAD.
- D. The Commission shall issue its permit, other order or determination in writing within twenty-one (21) calendar days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.
- E. The Commission in an appropriate case may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act (G.L. Ch.131 §40) and Regulations (310 CMR 10.00).
- F. The Commission shall have the authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of Boards and Officials listed in §7-706. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed, and the commission shall take action on such information as is available.

Section 7-706 Coordination with Other Boards

Any person filing a permit application, Request for Determination of Applicability or ANRAD with the Conservation Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, and Building Inspector. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality, if the application or

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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 such boards and officials have had fourteen (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 such comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

Section 7-707 Permits, Determinations 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 a significant individual or cumulative effect on the resource area values protected by this chapter, the Commission, within twenty-one (21) days of the close of the hearing, shall issue or deny a permit for the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities. If it issues a permit the Commission shall impose conditions which the Commission deems necessary or desirable to protect said resource area values, and all activities shall be done in accordance with those conditions.
- B. Where no conditions are adequate to protect said resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of this chapter. It may also deny a permit for failure to submit necessary information and plans requested by the Commission; for failure to comply with the procedures, design specifications, performance standards, and other requirements in regulations of the Commission; or for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this chapter. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that 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.
- C. In reviewing activities within the buffer zone, the Commission shall presume the buffer zone is important to the protection of other resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, 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 may establish, in its regulations, design specifications, performance standards,

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and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, 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.

- D. In reviewing activities within the riverfront area, the Commission shall presume the riverfront area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements 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 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 purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.
- E. To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication. The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).
- F. The Commission shall presume that all areas meeting the definition of "vernal pools" under §7-709 of this chapter, including the adjacent area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations.
- G. A permit, Determination of Applicability (DOA), or Order of Resource Area Delineation (ORAD) shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five (5) 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 once for an additional one-year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land.

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- H. For good cause the Commission may revoke or modify any permit, Determination of Applicability (DOA), Order of Resource Area Delineation (ORAD) or any other order, determination or other decision issued under this chapter after notice to the holder, the public, abutters, and town boards, pursuant to §7-705 and §7-706, and after a public hearing.
- I. Amendments to permits, DOAs or ORADs shall be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.
- J. The Commission, in an appropriate case may combine the decision issued under this chapter with the Order of Conditions, permit, DOA, ORAD or Certificate of Compliance (COC) issued under the Wetlands Protection Act and Regulations.
- K. No work proposed in any application shall be undertaken until the permit, or ORAD 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 document has been recorded. If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.

Section 7-708 Promulgation of Regulations

- A. After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this chapter, effective when voted and filed with the Town Clerk. 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 reiterate the terms defined in this chapter, define additional terms not inconsistent with the chapter, and impose filing and consultant fees.

Section 7-709 Definitions

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

The term “AGRICULTURE” shall refer to the definition provided by G.L. Ch. 128 §1A.

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

- A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind
- B. Changing of preexisting 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

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- F. Driving of piles or erection, expansion or repair of buildings, or structures of any kind
- G. Placing of obstructions or objects in water
- H. Destruction of plant life, including cutting or trimming of trees and shrubs
- I. Changing temperature, biochemical oxygen demand or other physical, biological 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 chapter

The term “BANK” shall include 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.

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, the Town of Northbridge and any other legal entity, its legal representatives, agents, or assigns.

The term “POND” shall follow the definition of 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply.

The term “RARE SPECIES” shall include, without limitation, all vertebrate and invertebrate animals and all 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.

The term “VERNAL POOL” shall include, in addition to scientific definitions found in the Regulations under 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 predatory 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 area for vernal pools shall be the mean annual high-water line defining the depression.

Except as otherwise provided in this chapter or in regulations of the Conservation Commission, the definitions of terms and procedures in this chapter shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

Section 7-710 Security

As part of a permit issued under this chapter, in addition to any security required by another municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed hereunder (including conditions requiring mitigation work) 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 under a written third-party escrow arrangement 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 (COC) 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 by the owner of record, running with the land to the benefit of the Town of Northbridge, 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.

Section 7-711 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 Northbridge Conservation 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 letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under G.L. Ch. 40 §21D, and 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 Board of Selectmen and 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. Town of Northbridge boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- E. As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in G.L. Ch. 40 §21D, which has been adopted by the Town of Northbridge in §1-109 of the general bylaws.

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- F. Any person who violates any provision of this chapter, regulations thereunder or permits or administrative orders issued thereunder, shall be punished by a fine of not more than three hundred dollars (\$300). 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.

Section 7-712 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 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.

Section 7-713 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 (G.L. Ch. 131 §40) and Regulations (310 CMR 10.00) thereunder. It is the intention of this bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations.

Section 7-714 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, approval or determination which previously has been issued.

Section 7-715 Appeals

A decision of the Conservation Commission shall be reviewable in the superior court in accordance with G.L. Ch. 249 §4.