

Chapter 187

WETLANDS

[HISTORY: Adopted by the Annual Town Meeting of the Town of Chelmsford 5-8-1995 by Art. 18. Amendments noted where applicable.]

[Amended by the Annual Town Meeting of the Town of Chelmsford 4-30-2009 Art. 17]

GENERAL REFERENCES

Conservation Commission -- See Ch. 20.

Zoning -- See Ch. 195.

Subdivision of land -- See Ch. 202.

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- ~ 187-1. **Purpose**

A. The purpose of Chelmsford Bylaw, Chapter 187 (“Chapter”) is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Chelmsford (“Chelmsford”) by controlling activities deemed by the Conservation Commission (“Commission”) likely to have a significant or cumulative effect on 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 water pollution, fisheries, fresh water shellfisheries, Wildlife Habitat, Rare Species habitat, Agriculture, aquaculture, recreation and aesthetic values deemed important to the community (collectively, the "Values Protected by this Chapter" or “Values”).

B. This Chapter is intended to utilize the Home Rule authority of Chelmsford 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 Chelmsford as significant, to protect all Resource Areas for their additional values beyond those recognized in the Act, and to impose in the Commission Regulations and permits additional standards and

procedures stricter than those of the Act and Act regulations, 310 CMR 10.00, subject, however, to the rights and benefits accorded to Agricultural uses and structures of all kinds under the laws of the Commonwealth of Massachusetts (“Commonwealth”) and other relevant Bylaw Chapters of Chelmsford.

~ 187-2. Jurisdiction

A. Except as permitted by the 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, reservoirs, lakes, Ponds of any size, beaches, lands under water bodies; intermittent streams, brooks and creeks; Buffer Zones; perennial rivers, streams, brooks and creeks; the Riverfront Area; lands subject to flooding or inundation by groundwater or surface water. Said Resource Areas shall be protected whether or not they border surface waters.

B. The jurisdiction of this Chapter 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 Act regulations, 310 CMR 10.04.

~ 187-3. Definitions

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

ABUTTER(S) -- Includes owners of property immediately adjacent or directly opposite on any public or private street or way, or across a water body or in another municipality if within 300 feet of the boundary of the property where work is proposed.

AGRICULTURE -- shall be defined as provided by G.L. Ch. 128 §1A.

ALTER(ATION) -- Includes, without limitation, the following activities when undertaken to, upon or within, or affecting Resource Areas subject to this Chapter:

(1) Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind.

(2) Changing of preexisting drainage, flushing or flood storage characteristics; salinity distribution, sedimentation patterns or flow patterns.

(3) Drainage or other Disturbance of water level or water table.

(4) Dumping, discharging, or filling with any material or other activity which may degrade water quality in or out of Chelmsford.

(5) Driving of piles or erection, expansion or repairs of Buildings or structures of any kind.

(6) Placing of obstructions or objects in water.

(7) Destruction of plant life, including cutting of trees and shrubs.

(8) Changing of temperature, biochemical oxygen demand or other physical, biological or chemical characteristics of any waters.

(9) Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater.

(10) Incremental activities which have, or may have, a cumulative adverse 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 of the mean annual flood level, whichever is higher.

BUFFER ZONE -- The lands out to a distance of 100 feet horizontally that adjoin the following: any freshwater wetlands, marshes, wet meadows, bogs, swamps, Vernal Pools, springs, Banks, reservoirs, lakes, Ponds of any size, beaches, lands under water bodies, intermittent streams, brooks and creeks.

BUILDING -- A structure enclosed within exterior walls or fire walls, built, erected and framed of a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition, "roof," shall include an awning or any similar covering, whether or not permanent in nature.

DISTURBANCE -- Any activity that will change the natural condition of the land or Alter the characteristics of the land involving, but not limited to, land clearing, filling, grading, covering and dumping.

PARKING LOT/AREA -- An off-street area, including parking spaces, loading areas and all associated maneuvering areas such as aisles and driveways, serving as an accessory use for the parking of vehicles and available to the public as an accommodation for clients, customers or employees.

PERSON -- Includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or a political subdivision thereof to the extent subject to Chelmsford Bylaws, administrative agencies, public or quasi-public corporations or bodies, Chelmsford and any other legal entity, its legal representatives, agents or assigns.

POND -- As defined in the Act regulations, 310 CMR 10.04, except that the size threshold of 10,000 square feet shall not apply.

RARE SPECIES -- Those vertebrate and invertebrate animal species and plant species officially listed as endangered, threatened or of special concern by the Massachusetts Division of Fisheries and Wildlife under regulations 321 CMR 10.00 regardless of whether the site in which they occur has been previously identified by the Division.

RESOURCE AREA(S) -- Areas that are presumed important to the protection of the Values of the Chapter including any freshwater wetlands, marshes, wet meadows, bogs, swamps, Vernal Pools, springs, Banks, reservoirs, lakes, Ponds of any size, beaches, lands under water bodies, intermittent streams, brooks and creeks; Buffer Zones; perennial rivers, streams, brooks and creeks; the Riverfront Area; and lands subject to flooding or inundation by groundwater or surface water, whether or not they abut surface water.

RIVERFRONT AREA -- lands adjoining perennial rivers, streams, brooks and creeks out to a distance of 200 feet.

VALUES PROTECTED BY THIS CHAPTER -- Includes public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution prevention, fisheries, freshwater shellfisheries, Wildlife Habitat, Rare Species habitat, Agriculture, aquaculture, recreation and aesthetics.

VERNAL POOL -- shall include, in addition to scientific definitions found in the Act regulations, 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 Areas for Vernal Pools shall be the mean annual high-water line defining the depression.

WILDLIFE -- All mammals, birds, reptiles, amphibians and vertebrate and invertebrate animal species, except domesticated species.

A. The Commission may adopt additional definitions consistent with this Chapter.

B. Except as otherwise provided in this Chapter or in Commission Regulations, the definitions of terms and the procedures in this Chapter shall be as set forth in the Act and Act regulations, 310 CMR 10.00.

~ 187-4. Exemptions and Exceptions

The applications and permits required by this Chapter shall not be required for:

A. Work performed for normal maintenance or improvement of lands in Agricultural and aquacultural use as defined by the Act regulations, 310 CMR 10.04.

B. 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 telecommunications services, provided that written notice has been given to the Commission prior to commencement of work and that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

C. 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 by an agency of the Commonwealth or its political subdivision; that advance notice, oral or written, has been given to

the Commission prior to or within twenty- four (24) hours after commencement of work; that the Commission or its agent certifies the work as an emergency project; 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 that within twenty-one (21) days of commencement of an emergency project a permit application shall be filed with the Commission for review.. 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.

D. Minor activities as specified in the Commission Regulations within the Buffer Zone or Riverfront Area, provided the activity is not within any other Resource Area.

E. Other than stated in this Chapter and the Commission Regulations, the exceptions provided in the Act and Act regulations, 310 CMR 10.00 shall not apply.

~ 187-5. Limitations on Construction and Disturbance

A. The construction of any Building, as defined herein, on any lot having an area of 40,000 square feet or more shall be prohibited within 50 feet of any Resource Area excluding Buffer Zones, Riverfront Area and lands subject to flooding or inundation by groundwater or surface water. The Commission may, at its discretion, allow a shed, playhouse or other structure; provided that it is built on footings requiring no more than four square feet cumulative ground disturbance and has a footprint no larger than 144 square feet.

B. The construction of any Parking Lot/Area including 10 or more parking spaces shall be prohibited within 50 feet of any Resource Area excluding Buffer Zones, Riverfront Area and lands subject to flooding or inundation by groundwater or surface water. Any drives, fire lanes or appurtenances shall be clearly marked "No Parking".

C. The construction of any impervious surface shall be prohibited within 30 feet of any Resource Area excluding Buffer Zones, Riverfront Area and lands subject to flooding or inundation by groundwater or surface water.

D. The Disturbance of any area shall be prohibited within 25 feet of any Resource Area excluding Buffer Zones, Riverfront Area and lands subject to flooding or inundation by groundwater or surface water.

E. The reconstruction, alteration, extension or structural change of a Building existing on or before October 15, 1990, shall be exempt from the provisions of 187-5.A. However, said work shall require approval from the Commission if within its jurisdiction.

F. The Commission may waive any provisions of 187-5, Limitations on Construction and Disturbance, where the Commission specifically finds that literal enforcement of the provision would involve demonstrated substantial hardship to an applicant and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this Chapter.

~ 187-6. Applications and Fees

A. Written application shall be filed with the Commission to perform activities affecting Resource Areas. 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 Area. No activities shall commence except as explicitly permitted in writing by the Commission.

B. The Commission in an appropriate case may accept as the application and plans under this Chapter any application and plans filed under the Act and Act regulations, 310 CMR 10.00, but the Commission is not obliged to do so.

C. Any Person desiring to know whether a proposed activity or an area is subject to this Chapter may request in writing 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 the applicant shall pay a non refundable fee as specified in the Commission Regulations. . The fee is in addition to that required by the Act and Act regulations.

E. Pursuant to G.L. Ch. 44 §53G and the Commission Regulations, 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

~ 187-7. Notice and Hearings

A. Any Person filing a permit application or ANRAD with the Commission l at the same time shall give written notice by certified mail (return receipt requested) or hand delivered to all Abutters and abutters to Abutters within 300 feet of the property line of the applicant at their mailing addresses shown on the most recent applicable tax list of the assessors. The notice shall state a brief description of the project or other proposal and the date any Commission hearing or meeting date if known. The notice to Abutters also shall include a copy of the application or request, with plans, or shall state where copies may be examined or 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.

B. The Commission shall hold a public hearing on any permit application, RDA, or ANRAD with written notice given at the expense of the applicant, at least five (5) business days prior to the hearing, in a newspaper of general circulation in Chelmsford and by mailing a notice to the applicant. When the applicant is other than the owner, the request and the notice of the hearing shall be sent by the applicant to the owner. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission.

C. The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed permit application, RDA, or ANRAD unless an extension is authorized in writing by the applicant.

D. The Commission, in an appropriate case, may combine its hearing under this Chapter with the hearing conducted under the Act and the Act regulations, 310 CMR 10.00.

E. The Commission may continue the hearing to a date announced at the hearing for reasons stated at the hearing. These may include the need for additional information from the

applicant or others as deemed necessary by the Commission in its discretion and based on comments and recommendations of the boards and officials indicated in Section ~ 187-8.

F. The Commission shall issue its permit, other order or determination in writing within twenty-one (21) days of the close of the public hearing unless an extension is authorized in writing by the applicant.

~187-8. Coordination with Other Boards

The Commission may solicit the advice and opinions of appropriate Boards, Departments and Town Officials. Each shall be entitled to file written comments and recommendations with the Commission at least three (3) days before the hearing. The Commission shall take these comments and recommendations into account, but may not be bound by them. The applicant shall have the right to receive any such comments and recommendations, and respond to them at the hearing.

~ 187-9. Burden of Proof

The applicant shall have the burden of proving by preponderance of the credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the 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.

~ 187-10. Permits and Conditions

A. If after a public hearing the Commission determines that the activities in the permit application, or the land and water uses which will result there from are likely to have a significant individual or cumulative effect on the Resource Area values, the Commission shall issue or deny a permit for the activities requested within twenty-one (21) days of the close of the hearing. 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.

B. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect Resource Area values. All activities shall be conducted in accordance with those conditions.

C. Where no conditions are adequate to protect Resource Area values, the Commission is empowered to deny a permit application for failure to meet the requirements of this Chapter. It may also deny a permit application 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 the regulations of the Commission; or for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the Resource Area values.

D. 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 can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of Wildlife Habitat.

E. In reviewing activities within the Riverfront Area, the Commission shall presume the Riverfront Area is important to all the Values Protected by this Chapter unless demonstrated otherwise. No permit issued hereunder shall allow any activities unless the applicant, in addition to meeting the 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 that 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.

F. 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.

G. The Commission may require a Wildlife Habitat study of the project area pursuant to 187-6.E to be paid for by the applicant, whenever it deems appropriate, regardless of 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 Act regulations, 310 CMR 10.60.

H. The Commission shall presume that Vernal Pools including their Buffer Zone 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 Act regulations, 310 CMR 10.60.

I. A permit, Determination of Applicability (DOA), or Order of Resource Area Delineation (ORAD) shall expire three (3) 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 the time and location of work is given to the Commission. Any permit may be renewed once for up to an additional three (3) year period, provided that a request for a renewal is received in writing by the Commission thirty (30) days 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.

J. For good cause the Commission may revoke any permit, DOA, or ORAD or any other order, determination or other decision issued under this Chapter after notice to the holder, the public, Abutters, town boards and a duly conducted public hearing.

K. Amendments to permits, DOA's, or ORAD's shall be handled in the manner set out in the Act regulations and policies.

L. The Commission in an appropriate case may combine the decision issued under this Chapter with the permit, DOA, ORAD, or Certificate of Compliance (COC) issued under the Act and Act regulations.

M. No work proposed in any application shall be undertaken until a 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, either at the time of recording or as a condition precedent to the issuance of a COC.

~ 187-11. Regulations

A. After public notice and public hearing, the Commission shall establish rules and regulations to carry out the purposes of this Chapter, effective when voted and filed with the Town Clerk. Failure by the Commission to issue 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. At a minimum these regulations shall reiterate the terms defined in this Chapter, define additional terms not inconsistent with the Chapter, and impose specific filing and consultant fees.

B. The Commission may establish, in its regulations, design specifications, performance standards, 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 Chapter.

~ 187-12. Security

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 including conditions requiring mitigation work be secured wholly or in part by one or both of the methods described below:

A. By a proper bond, 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 the issuance of a COC for work performed pursuant to the permit.

B. By accepting a conservation restriction, easement or by a covenant, enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of Chelmsford 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.

~ 187-13. 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 the 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 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. Any Person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this Chapter or in violation of any permit issued pursuant to this Chapter shall forthwith comply with any such order to restore such land to its condition prior to any violation; provided, however, that no action, civil or criminal, shall be brought against such Person unless commenced within three (3) years following the date of acquisition of the real estate by such Person.

E Any Person who violates any provision of this Chapter or of any conditions of a permit issued pursuant to it may be punished in accordance with Chelmsford General Code, Chapter I, Article II, § 1-2 “Non-Criminal Disposition”. Each day or portion thereof during which a violation continues shall constitute a separate offense. This Chapter may be enforced by the Commission, Conservation Agent or designee of the Commission, a town Police Officer or other officer having police powers. Upon request of the Commission, the Board of Selectmen and Town Counsel shall take such legal action as may be necessary to enforce this Chapter and permits issued pursuant to it.

~187-14. Appeals

A decision of the Commission shall be reviewable in the Superior Court in accordance with G.L. Ch. 249 §4.

~ 187-15. 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.