

**Article 22** Voted to delete Chapter 139 of the Code of the Town of Belchertown relative to Wetlands Protection in its entirety and to replace it with a new Chapter 139 Wetlands Protection By-Law as follows:

**Chapter 139. Wetlands Protection Bylaw**

**§ 139-1. Purpose.**

A. The purpose of this chapter is to protect the wetland resource areas, related water resources and adjoining land areas in the Town of Belchertown by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following:

- (1) Public or private water supply.
- (2) Groundwater and groundwater quality.
- (3) Surface water and surface water quality.
- (4) Flood control.
- (5) Erosion and sedimentation control.
- (6) Storm damage prevention.
- (7) Prevention of water pollution.
- (8) Storm drainage.
- (9) Fisheries.
- (10) Wildlife habitat.
- (11) Agriculture.
- (12) Aquaculture.
- (13) Recreation.

B. These values are to be known collectively as the "wetland values protected by this chapter."

**§ 139-2. Jurisdiction.**

A. Except as permitted by the Conservation Commission or as provided for in this chapter, no person shall remove, fill, dredge, build upon or alter the following resource areas or within 100 feet of these resource areas, an area known as the "buffer zone to the resource areas":

- (1) Any freshwater wetland as determined by vegetational community, soil composition and/or hydrologic regime, including isolated wetlands, any marsh, wet meadow, bog or swamp.
- (2) Any pond, lake, river and any perennial or intermittent stream.
- (3) Any land under such waters.
- (4) Any bank or beach.
- (5) Any land subject to flooding or inundation by groundwater, water or storm flowage, including ephemeral ponds, vernal pools and kettle holes.

B. Where natural vegetation is absent as a result of mowing, grazing or disturbance, the hydric soil type indicated on United States Natural Resource Conservation Service maps, combined with field investigation of hydric soil profiles and application of the Natural Resource Conservation Service's definitions and criteria for hydric soils, shall provide positive determination of jurisdiction.

**§ 139-3. Exempt Activities**

A. Existing public service structures or facilities.

- (1) The application and permit required by this chapter shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing or lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services, sanitary sewers and storm sewers, provided that:
  - (a) The structure or facility is not substantially changed or enlarged;
  - (b) Written notice has been given to the Commission at least two working days prior to commencement of work; and
  - (c) The work conforms to performance standards and design specifications in regulations adopted by the Commission.
- (2) This exemption does not apply to septic systems, new or otherwise.

B. Emergency projects for protection of the public.

- (1) The application and permit required by this chapter shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that:
  - (a) 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;
  - (b) Advance written notice, or oral followed by written, has been given to the Commission prior to commencement of work or within 24 hours after commencement;
  - (c) The Conservation Commission or its agent certifies the work as an emergency project;
  - (d) 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

(e) Within 21 days of commencement of an emergency project, at the direction of the Commission and/or staff, either a permit application shall be filed with the Commission for review as provided in this chapter or an as-built plan shall be filed with the Commission, whereupon the Commission may, after notice and public hearing, require restoration, project modification and mitigation measures to protect the values stated in this chapter.

(2) 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. Normal Maintenance and/or Improvement of Land in Agricultural Use. The application and permit required by this chapter shall not be required for work performed for the normal maintenance or improvement of lands in lawful, active agricultural use as defined in 310 CMR 10.04, provided that no further encroachment into areas subject to this chapter occurs without prior review and permission by the Commission.

**§ 139-4. Request for determinations; application for permit.**

A. Requests.

Any person desiring to know whether or not 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 shall contain data and plans specified by the regulations of the Commission, containing sufficient information to make a determination, as the Commission determines necessary. Failure to provide any of the information required herein, including but not limited to seasonal field data, is sufficient cause for the Commission to issue a positive determination. The Commission, in an appropriate case, may accept as the request under this chapter the request for determination of applicability filed under the Wetlands Protection Act, MGL c. 131, § 40.

- (1) Failure to pay the filing fee shall be sufficient grounds to reject the application or request.
- (2) The Commission may waive the filing fee and costs and expenses for an application or request filed by the Town of Belchertown or by a government agency and may waive the filing fee for a request for determination filed by a person having no financial connection with the property which is the subject of the request.

B. Applications.

Written application shall be filed with the Commission to perform activities regulated by this chapter and which affect 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 areas subject to protection under this chapter. The application shall include a complete and accurate description of the site, including the type and boundaries of resource areas, the proposed work and the potential for cumulative effects on any areas subject to protection hereunder. No activities within any jurisdictional areas shall commence without receiving and complying with a permit issued pursuant to this chapter. The Commission, in an appropriate case, may accept as the application and plans required under this chapter the notice of intent or abbreviated notice of resource area delineation, and plans filed under the Wetlands Protection Act, MGL c. 131, § 40.

C. Fees and costs.

At the time of a request or application, 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, MGL c. 131, § 40.

- (1) Failure to pay the filing fee shall be sufficient grounds to deny the application or request.
- (2) The Commission may waive the filing fee and costs and expenses for an application or request filed by the Town of Belchertown or by a government agency and may waive the filing fee for a request for determination filed by a person having no financial connection with the property which is the subject of the request.

**§ 139-5. Public notice and hearings.**

- A. A request or an application with the required filing fee shall be hand delivered or sent by certified mail to the Commission. When a person requesting a determination \, the request shall also be sent certified mail to the owner by the applicant.
- B. The Commission shall conduct a public hearing on any request for determination or application for a permit, with written legal notice given at the expense of the applicant five days prior to the hearing in a newspaper of general circulation in the Town of Belchertown. The Commission, in an appropriate case, may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act, MGL c. 131, § 40.
- C. The Commission shall commence the public hearing within 21 days from receipt of a completed application or request for determination, unless the applicant extends the twenty-one-day period by a signed written waiver.
- D. The Commission shall have authority to continue the hearing to a date certain announced at the hearing for reasons stated at the hearing, which may include the receipt of additional information offered by the applicant or others, information and plans required of the applicant, or comments and recommendations of local boards and officials, deemed necessary by the Commission in its discretion.
- E. The Commission, its agent, officers and employees, may enter upon the land for which a request or application has been made, upon which the proposed work is to be done, for the purpose of carrying out its duties under this chapter and may make or cause to be made such examination, sampling or survey as is deemed necessary. Refusal of the property owner to grant access requested by the Commission shall be grounds for denial of the application.
- F. The Commission shall issue its determination in writing within 21 days of the submission of a complete filing; and issue a permit in writing within 21 days of the close of the public hearing thereon.

**§ 139-6. Determinations, permits and conditions.**

- A. The Commission shall have the authority, after a public hearing, to determine whether a specific parcel of land contains or does not contain resource areas protected under this chapter and shall have the authority to determine whether proposed activities will adversely affect those resource areas or the buffer zone. If the Commission finds that no such resource areas are present, it shall issue a negative determination. If the Commission finds that the proposed activities will not adversely affect any area under jurisdiction, the Commission may issue a negative determination.

- B. If the Commission, after a public hearing on the permit application, determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the wetland values protected by this chapter, the Commission, within 21 days of the close of the hearing, shall issue a permit or denial 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 thus permitted shall be done in accordance with those conditions.
- C. The Commission is empowered to deny a permit for the following reasons:
  - (1) Failure to meet the requirements of this chapter;
  - (2) Failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this chapter;
  - (3) Failure to submit necessary information and plans requested by the Commission;
  - (4) Failure to meet the design specifications, performance standards and other requirements in regulations of the Commission; and
  - (5) Where no conditions are adequate to protect the wetland values protected hereunder.
- D. 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. A permit may be renewed for up to an additional three-year period, provided that a request for a renewal is received, in writing, by the Commission prior to expiration, and the Commission votes to approve the extension at a public meeting.
- E. For good cause, the Commission may revoke or amend a permit issued under this chapter after public notice and public hearing and notice to the holder of the permit.
- F. The Commission, in an appropriate case, may combine the permit or other action on an application issued under this chapter with the order of conditions issued under the Wetlands Protection Act.

**§ 139-7. Regulations of the Conservation Commission.**

- A. After public notice and public hearing the Commission may, from time to time, promulgate performance standards, design specifications, policy guidelines and other rules and regulations to accomplish the purposes of this chapter.
- B. 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.
- C. Unless otherwise stated in this chapter, or in the rules and regulations promulgated under this chapter, the definitions, procedures and performance standards of the Wetlands Protection Act, MGL c. 131, § 40 and associated regulations, 310 CMR 10.00, shall apply.

**§ 139-8. Definitions.**

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

**AGRICULTURE**

Any work which produces food or other products for commerce or subsistence. Agriculture includes, but is not limited to, the growing of crops, the raising of livestock, and the production of forest products.

## ALTER

Includes, 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, clay, minerals or aggregate materials of any kind.
- B. Changing 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 water temperature, biochemical oxygen demand or other physical, chemical or biological characteristics of surface and ground water.
- J. Excavation for the purpose of percolation or deep hole testing or the crossing of a resource area with heavy equipment for this purpose.
- K. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

## CUMULATIVE EFFECTS

Activities regulated under this chapter, which may be individually minor, but when considered in relation to other past, present or future activities in a given area may be significant in the aggregate.

## EROSION AND SEDIMENTATION CONTROL

A.

### EROSION CONTROL

The ability of the wetland to buffer forces or processes which would threaten or cause to be threatened the stability of landforms and the soil and/or vegetation associated with wetlands and adjoining land areas, in particular, coastal and inland banks. Erosion can be caused by a wearing away of the surface soil or by undermining the interior portion of the landform. Activities in or within 100 feet of resource areas shall not have a significant effect on natural erosion processes.

B.

### SEDIMENTATION CONTROL

The ability of wetlands to settle out sediments and other waterborne material by reducing water flow by passing it through vegetation or by diffusing flow and reducing velocity. Activities in or within 100 feet of resource areas shall not accelerate or impede the rate of natural sedimentation significantly.

### FLOOD CONTROL

The ability of wetlands to absorb, store and slowly release floodwaters to minimize peak flood levels. Flooding can be caused by precipitation or a rising water table. Activities within 100 feet of resource areas shall not alter the flood control value of wetlands significantly.

## GROUNDWATER

All subsurface water contained in natural geologic formations or artificial fill, including soil water in the zone of aeration. Activities in or within 100 feet of resource areas shall not significantly alter the existing quality or elevation of naturally occurring groundwater.

## PRIVATE WATER SUPPLY

Any source or volume of surface or ground water demonstrated to be in private use or shown to have potential for private use, including ground or surface water in the zone of contribution around a private well. Activities in or within 100 feet of a resource area shall not have a significant effect on the quality of a private water supply.[1]

#### PUBLIC WATER SUPPLY

Any source or volume of surface or ground water demonstrated to be in public use or approved for water supply pursuant to MGL c. 111, § 160 by the Department of Environmental Quality Engineering Division of Water Supply, or demonstrated to have a potential for public use, in addition to all surface and ground water in zones of contribution. Activities within 100 feet of resource areas shall not have a significant effect on the quality of a public water supply.

#### RECREATION

Any leisure activity or sport taking place in, on, or within 100 feet of a resource area which is dependent on the resource area and its values directly or indirectly for its conduct and enjoyment. Recreational activities include, but are not limited to, the following: noncommercial fishing and shellfishing, hunting, boating, swimming, walking, painting, birdwatching and aesthetic enjoyment. Structures and activities in or within 100 feet of a resource area shall not have a significant effect on public recreational values. Notwithstanding this definition, new or expanded recreational activities shall not have a significant effect on other wetlands values identified in §139-1 of this chapter.

#### STORM DAMAGE PREVENTION

The ability of wetland soils, vegetation and physiography to prevent damage caused by water from storms, including but not limited to: erosion and sedimentation; damage to vegetation, property or buildings; or damage caused by flooding, waterborne debris or waterborne ice. Activities in or within 100 feet of a resource area shall not have a significant effect on storm damage protection.

#### WILDLIFE HABITAT

Resource areas that provide breeding and nesting habitats, shelter, food and water to all plant and animal species dependent on wetlands for any portion of their life cycles. Includes resource areas identified as containing rare, threatened or endangered species as listed by the Massachusetts Natural Heritage Program. Structures and activities in or within 100 feet of any resource area shall not have a significant effect on wildlife habitat.

#### **§ 139-9. Waivers.**

- A. *The Conservation Commission, acting in its discretion, may waive strict compliance with this Bylaw if such action is allowed by federal, state and local statutes, bylaws, and/or regulations; is in the public interest; and is consistent with the purposes of this Bylaw.*

<b><u>§ 139-10. Security.</u></b>
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- A. The Commission may require the establishment of an escrow account or other security running to the municipality, and sufficient as to form and surety in the opinion of the Commission's counsel, to secure faithful and satisfactory performance of work required by any permit, in such sum and upon such conditions as the Commission may require.
- B. Notwithstanding the above, the amount of such escrow account of security shall not exceed the estimated cost of the work required or the restoration of affected lands and properties if the work is not performed as required, whichever is greater. Forfeiture of any such escrow account or security

shall be recoverable at the suit of the municipality in Superior Court. The Commission may, at its discretion, accept as security 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 Belchertown whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

**§ 139-11. Right of entry; enforcement; violations and penalties.**

- A. The Commission shall have authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions. Upon request of the Commission, the Board of Selectmen may authorize Town Counsel to take legal action for enforcement of this chapter under civil law. The Conservation Commission may also take legal action for enforcement under criminal law. Duly authorized Town Officials, including but not limited to the Conservation Administrator and any police officer or other officer having police powers, shall have authority to assist with the Commission's enforcement.
- B. Any person who violates any provision of this chapter, including any causing, suffering or allowing of illegal work, any failure or refusal to comply with an enforcement order, violation notice or administrative order and any failure or refusal to remove illegal fill, restore property or obtain necessary Commission approval, or any person who violates the permits issued by the Commission, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the chapter, regulations or permit violated shall constitute a separate offense. This fine may be in addition to any levied under the Wetlands Protection Act, MGL c. 131, § 40.
- C. In the alternative the criminal prosecution, the Commission may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D. For purposes of noncriminal disposition, the Conservation Commissioners or staff shall be the enforcing persons.

**§ 139-12. 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 application will not have unacceptable significant or cumulative effect upon the wetland 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.

**§ 139-13. Authority; relation to 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 the regulations thereunder.

**§ 139-14. 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.

- C. secure faithful and satisfactory performance of work required by any permit, in such sum and upon such conditions as the Commission may require.
- D. Notwithstanding the above, the amount of such escrow account of security shall not exceed the estimated cost of the work required or the restoration of affected lands and properties if the work is not performed as required, whichever is greater. Forfeiture of any such escrow account or security shall be recoverable at the suit of the municipality in Superior Court. The Commission may, at its discretion, accept as security 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 Belchertown whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

the wetland 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.

(Vote – Unanimous Yes)