

Chapter 227
WETLANDS PROTECTION

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[HISTORY: Adopted by the Special Town Meeting of the Town of Easton 9-15-1986 by Art. 27 (Art. 29 of the 1922 Bylaws). Amended May 16, 2011; amendments prior to May 16, 2011 noted where applicable.]

GENERAL REFERENCE

Conservation Commission regulations - See Ch. 503.

Chapter 227

WETLANDS PROTECTION

§ 227-1. Purpose. [Amended 5-11-1998 ATM by Art. 51; 5-17-2004 ATM, Art. 25]

The purpose of this chapter is to protect the wetlands, water resources and adjoining land areas in this municipality 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: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution, fisheries, shellfish, wildlife habitat, recreation, aesthetics, agriculture and agriculture values (collectively the "wetland values protected by this chapter"). This chapter 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 c. 131, § 40, and 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.

§ 227-2. Jurisdiction. [Amended 4-29-1991 ATM by Art. 29; 5-11-1998 ATM by Art. 51; 5-17-2004 ATM, Art. 25; 6-6-2005 ATM by Art. 10]

Except as permitted by the Easton Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; beaches; reservoirs; lakes; ponds of any size; rivers; streams; creeks; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; and lands within 100 feet of any of the aforesaid resource areas; rivers, streams and creeks whether perennial or intermittent; and lands within 200 feet of any river, stream, or creek (collectively the "resource areas protection¹ by this chapter"). Said resource areas shall be protected whether or not they border surface waters.

§ 227-3. Exceptions. [Amended 5-17-2004 ATM, Art. 25]

- A. 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. Provided, however, nothing contained within this provision shall prohibit the Commission from exercising its full enforcement powers under this chapter and the Wetlands Protection Act should it determine the activity is not normal maintenance or improvement of land in agricultural use.
- B. 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 work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

¹ Editor's Note: So in original. Apparently should read "protected."

- C. The permit and application required by this chapter shall not apply to emergency projects necessary for the protection of the health or 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 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 21 days of commencement of any emergency project a permit application shall be filed with the Commission for review as provided in 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.
- D. Other than stated in this section, the exceptions provided in the Wetlands Protection Act² and regulations, 310 CMR 10.00, shall not apply under this chapter.

§227-4. Application for permit; request for determination; fees; outside consultants. [Amended 4-29-1991 ATM by Art. 30; 4-29-1991 ATM by Art. 31; 5-18-2009 ATM by Art. 32]

- A. Written application shall be filed with the Commission to perform activities regulated by this chapter 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 environment and the resource areas protected under this chapter. No activities shall commence without receiving and complying with a permit issued pursuant to this chapter. [Amended 5-17-2004 ATM, Art. 25]
- B. The Commission in an appropriate case may accept as the application and plans under this chapter the Notice of Intent and plans filed under the Wetlands Protection Act, MGL c. 131, § 40, and regulations, 310 CMR 10.00.
- 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 shall contain data and plans specified by the regulations of the Commission.
- D. At the time of a permit application or request for determination, the applicant shall pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act, MGL c. 131, § 40, and Regulations, 310 CMR 10.00. The Commission may waive the filing fee, consultant fee and costs and expenses for a permit application or request for determination 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. Upon receipt of a permit application or request for determination, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the consultant fee. The specific consultant services may include but are not limited to wetlands survey and delineation, analysis of wetland values, hydrogeologic and drainage analysis, wildlife habitat evaluations and environmental or land use law.

² Editor's Note: See MGL c. 131 § 40.

- F. The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. The applicant shall pay the fee to the town to be put into a consultant services account of the Commission which may be drawn upon by the Commission for specific consultant services approved by the Commission at one of its public meetings.
- G. The exercise of discretion by the Commission in making its determination to require the payment of a 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.
- H. The Commission shall return any unused portion of the consultant fee to the applicant unless the Commission decides at a public meeting that other action is necessary. Any applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.

I. The consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be in accordance with the regulations of the Commission.

§ 227-5. Notice and hearing. [Amended 4.29-1991 ATM by Art. 33]

- A. Any person filing a permit application or a request for determination with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand-delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice to abutters shall enclose a copy of the permit 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 application or request for determination, 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.
- C. The Commission shall commence the public hearing within 21 days from the receipt of a completed application or request for determination, unless an extension is authorized in writing by the applicant.
- D. The Commission shall issue its permit or determination, in writing, within 21 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, MGL c. 131, § 40, and regulations, 310 CMR 10.00.
- F. 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 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 § 227-6. 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.

§ 227-6. Review by other boards and officials. [Amended 10-2-1989 STM by Art. 8; 5-17-2004 ATM, Art. 25]

Any person filing an application for permit (Form 3 or 4) or a request for determination (Form 1) with the Commission shall inform each of the following: the Board of Selectmen, Planning and Zoning Board, Board of Appeals, Board of Health, Town Engineering Division and Building Inspector, by certified mail or hand delivery, that the same is on file in the Commission office for their immediate review. A copy shall be provided in the same manner to the Conservation Commission of an adjoining municipality, if the application for permit or request for determination 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 action until such 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 such comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

§ 227-7. Issuance or denial of permit; terms of permit.

- A. If the Commission after a public hearing 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 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. A permit may identify requirements that 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. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation and replication of protected resource areas throughout the municipality, resulting from past activities, permitted and exempt, and foreseeable future activities. **[Amended 5-11-1998 ATM by Art. 51; 5-17-2004 ATM, Art. 25]**
- B. **[Amended 5-11-1998 ATM by Art. 51]** The Commission is empowered to deny a permit for failure to meet the requirements of this chapter; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this chapter and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.
- (1) Lands within 100 feet of the specified resource areas, and within 200 feet of rivers, streams, and creeks, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse effect upon them either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, but not be limited to, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within the aforementioned one-hundred-foot or two-hundred-foot area, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by this chapter. The specific size and type of protected area may be established by regulations of the Commission. **[Amended 5-17-2004 ATM, Art.25]**

- (2) In the case of areas within 200 feet of rivers, streams, and creeks, no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this chapter, has proved by a preponderance of the evidence that there is no practicable alternative to the proposed project with less adverse effects, and should there be no practicable alternative, 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 purposes, logistics, existing technology, costs of the alternatives and overall project cost.
- (3) To prevent wetland loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication. **[Amended 5-17-2004 ATM, Art. 25]**
- (a) The Commission may require a wildlife habitat study of the project area, 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 possible presence of rare 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 at 310 CMR 10.60.
- (b) The Commission shall presume that all areas meeting the definition of "vernal pool" under 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 meeting the qualifications under the wildlife habitat section of the Wetlands Protection Act Regulations.
- C. For good cause, the Commission may revoke or modify a permit or determination issued under this chapter after notice to the holder of the permit, notice to the public, abutters and town boards, pursuant to § 227-5, and a public hearing. Amendments to permits or determinations shall be handled in the manner set out in the Wetlands Protection Act Regulations and policies thereunder. **[Amended 4-29-1991 ATM by Art. 34; 5-17-2004 ATM, Art. 25]**
- D. 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 Order of Resource Area Delineation (ORAD), Determination of Applicability or Certificate of Compliance issued under the Wetlands Protection Act and regulations thereunder. **[Amended 5-17-2004 ATM, Art. 25]**
- E. No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Registry of Deeds or, if the land affected thereby be 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 a permit has been so recorded. If the applicant fails to perform, the Commission may record the documents itself and shall take appropriate enforcement action, including but not limited to an order to cease and desist work. **[Added 4-29-1991 ATM by Art. 34; amended 5-17-2004 ATM, Art. 25]**

§ 227-8. Rules and regulations.

- A. After public notice and public hearing the Commission shall promulgate rules and regulations³ 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. **[Amended 5-17-2004 ATM, Art. 25]**
- B. At a minimum, these regulations shall define key terms in this chapter not inconsistent with this chapter and procedures governing the amount and filing of fees. **[Amended 4-29-1991 ATM by Art. 35]**

§ 227-9. Definitions.

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

ALTER - Includes, without limitation, the following activities, when undertaken to, upon, within or affecting resource areas protected⁴ by this chapter:

- (1) Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind.
- (2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics.
- (3) Drainage, or other disturbances of water level or water table. **[Amended 4-29-1991 ATM by Art. 36]**
- (4) Dumping, discharging or filling with any material which may degrade water quality.
- (5) Placing of fill, or removal of material, which would alter elevation.
- (6) Driving of piles, erection or repair of buildings or structures of any kind.
- (7) Placing of obstructions or objects in water.
- (8) Destruction of plant life including cutting of trees.
- (9) Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any water. **[Amended 5-17-2004 ATM, Art. 25]**
- (10) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.
- (11) Application of pesticides or herbicides. **[Added 4-29-1991 ATM by Art. 36]**

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. **[Added 5-17-2004 ATM, Art. 25]**

COMMISSION - The Conservation Commission of the Town of Easton.

PERSON - Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent

³ Editor's Note: See Ch. 503, Wetlands Protection.

⁴ Editor's Note: So in original. Should be "protected."

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.

POND - Shall follow the definition of 310 CMR 10.04, except that the size threshold of 10,000 square feet shall not apply. **[Added 5-17-2004 ATM, Art. 25]**

RARE SPECIES - Shall include, without limitation, all vertebrate and invertebrate animal 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. **[Added 5-17-2004 ATM, Art. 25]**

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 a Vernal Pool shall be 100 feet outward from the mean annual high-water line defining the depression, but shall not include a lawn, garden, landscaped area or developed area in existence at the time of the effective date of this provision in this chapter. **[Added 5-17-2004 ATM, Art. 25]**

- B. Except as otherwise provided in this chapter or the regulations of the Commission, the definitions of terms in this chapter shall be as set forth in the Wetlands Protection Act, MGL c. 131, § 40, and regulations, 310 CMR 10.00. **[Added 4-29-1991 ATM by Art. 36; amended 5-11-1998 ATM by Art. 51]**

§ 227-10. 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 hereunder 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. **[Amended 4-29-1991 ATM by Art. 37]**
- B. By 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 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. **[Amended 5-17-2004 ATM, Art. 25]**

§ 227-11. Enforcement; violations and penalties. [Amended 4-29-1991 ATM by Art. 38]

- 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 fill to be left in place 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 without the required authorization pursuant to this chapter.
[Amended 5-17-2004 ATM, Art. 25]

- B. The Commission, its agents, officers and employees shall have authority, to the extent provided by the constitutions and laws of the United States and the Commonwealth or with prior approval from the property owner, 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. **[Amended 5-17-2004 ATM, Art. 25]**
- C. The Commission shall have authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, administrative orders, non-criminal citations under MGL c. 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. **[Amended 5-17-2004 ATM, Art. 25]**
- D. Upon request of the Commission, the Board of Selectmen and the Town Council may take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law.
- E. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- F. Any person who violates any provision of this chapter, regulation thereunder, or permits or administrative orders issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues, or unauthorized fill remains in place, shall constitute a separate offense, and each provision of the chapter, regulations, permit or order violated shall constitute a separate offense.
- G. As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the noncriminal disposition procedure set further⁵ in MGL c. 40, § 21D, and adopted by the town as a general bylaw⁶.

§ 227-12. 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.

§ 227-13. 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 regulations thereunder.

§ 227-14. Severability.

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

⁵ Editor's Note: So in original. Should be "forth."

⁶ Editor's Note: See Ch. 50, Noncriminal Disposition of Violations.

§ 227-15. Appeals. [Added 4-29-1991 ATM by Art. 39; amended 5-17-2004 ATM, Art. 25]

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