

Chapter 267. WETLANDS PROTECTION

[HISTORY: Adopted by the Town Meeting of the Town of Foxborough as indicated in article histories. Amendments noted where applicable.]

General References: Earth removal — See Ch. 115. Hazardous materials — See Ch. 140.
Sewers — See Ch. 210. Streets and ways — See Ch. 235.
Zoning — See Ch. 275.

Article I. Wetlands and Groundwater Protection

[Adopted as Article IX, § 1, of the General Bylaws]

§ 267-1. Purpose.

The purpose of this bylaw is to protect the floodplains, wetlands and groundwater of the Town of Foxborough by controlling activities deemed to have a significant effect upon wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion control, storm damage prevention, water pollution, fisheries, wildlife and preservation of open space.

§ 267-2. Determination of applicability.

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may request a determination from the Conservation Commission in writing. The Conservation Commission shall issue its determination, in writing, within 21 days from receipt of such request.

§ 267-3. Notice of intent required.

- A. No person shall remove, fill, dredge, drain or alter any bank, freshwater wetland, flat, marsh, meadow, bog, swamp, or lands bordering any creek, river, stream, pond or lake, or any land under said waters or any land subject to flooding, other than in the course of 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 and used to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph, and other telecommunication services without filing written notice of his intention to so remove, fill, dredge, drain or alter and without receiving and complying with an order of conditions and provided all appeal periods have elapsed. Such notice shall be sent by certified mail to the Foxborough Conservation Commission, including such plans as may be necessary to describe such proposed activity and its effect on the environment.
- B. The same notice of intent, plans and specifications required to be filed by an applicant under MGL c. 131, § 40, will be accepted as fulfilling the requirements of this bylaw. The said Conservation Commission shall hear any oral presentation under this bylaw at the same public hearing required to be held under the provisions of said MGL c. 131, § 40. Definitions, time frames, and procedures, insofar as applicable, set forth in said chapter and section and regulations thereunder (310 CMR 10.00 *et seq.*) are hereby made a part of this bylaw.

§ 267-4. Definitions.

As used in this bylaw, the following terms shall have the meanings indicated:

PERSON Includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth whenever subject to Town bylaw, or any political subdivision of the Commonwealth whenever subject to Town bylaw, administrative agency, public or quasi-public corporation or body, or any other legal entity or its legal representative, agents, or assigns.

§ 267-5. Right of entry.

The Conservation Commission, its agent, officers, and employees may enter upon the land upon which the proposed work is to be done in response to a request for a prior determination or for the purpose of carrying out its duties under this bylaw and may make or cause to be made such examination or survey as deemed necessary.

§ 267-6. Denials and waivers; required setbacks.

The Conservation Commission is empowered to deny permission for any removal, dredging, draining, filling, or altering of subject lands within the Town if, in its judgment, such denial is necessary for the protection of public or private water supply, groundwater, flood control, storm damage prevention and the prevention of pollution. Due consideration shall be given to possible effects of the proposal on all values to be protected under this bylaw.

- A. The following requirements (*Subsection D*) may be waived by the Conservation Commission to a lesser distance by a super majority vote (five of seven members voting in favor). If the vote is taken with six or five members present, the affirmative vote shall be five of six or four of five. This waiver provision shall not apply if only four or fewer members are present and voting.
- (1) A waiver shall be specific and only include the placement of a treatment system or separations between treatment systems.
 - (2) All requests for the waiving of the placement or separation of treatment systems must be on the standard Conservation Commission application form, which must include information describing the positions and separations of other existing and proposed treatment systems and the reasons for the request. The application must prove by expert testimony that such a waiver would not be any more of an adverse impact on the wetlands, aquifer, recharge area, rivers, streams and ponds than the original setbacks.
- B. A separate public hearing shall be held on the application and will be held within the notice of intent public hearing. The hearing notice shall be posted and advertised in the appropriate newspaper at least seven days before the hearing date.
- C. The approval or disapproval of a request shall be final. A new application must be submitted and a new public hearing shall be held if a waiver request is being reapplied for.
- D. Required setbacks.
- (1) Any proposed system to be installed in connection with any newly constructed structure (excluding additions) which discharges foreign material into the soil over an aquifer (along with a two-hundred-fifty-foot protective strip) must be 250 feet from other existing or proposed systems.
 - (2) Any proposed system to be installed in connection with any newly constructed structure (excluding additions) which discharges foreign material into the soil within a recharge area (along with a one-hundred-foot protective strip) must be 200 feet from other existing or proposed system.
 - (3) Any proposed system to be installed in connection with any newly constructed structure (excluding additions) which discharges foreign material into the soil must be at least 150 feet from any wetland, river, stream or pond. The only exception to the one-hundred-fifty-foot setback will be the installation of a Department of Environmental Protection approved enhanced nitrogen removal system (fast system), which will be at least 100 feet from any wetland, stream or pond.
 - (4) All distances will be measured from the natural edge of the resource area, and no setbacks may be obtained by filling, altering, or relocating a resource area.

§ 267-7. Imposition of conditions.

The Conservation Commission may, as an alternative to a denial, impose such conditions as it deems necessary to contribute to the protection and preservation of the subject lands and contiguous lands in accordance with the purposes of this bylaw.

- A. The Conservation Commission may require the posting of a bond with surety, 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 an order of conditions, in such sum and upon such conditions as the Conservation Commission may require. Other evidence of financial responsibility which is satisfactory to the Conservation Commission may be accepted in lieu of bonding. Notwithstanding the above, the amount of such bond 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 bond or other security shall be recoverable at the suit of the municipality in Superior Court.
- B. Such bond or other security shall be released upon issuance of a certificate of compliance.

§ 267-8. Setback from vegetated wetlands and inland banks.

No activity other than the maintenance of an already existing structure which will result in the building within or upon, removing, filling, or altering of land within 25 feet of a bordering vegetated wetland or an inland bank will be permitted by the Conservation Commission. The only exceptions to the above twenty-five-foot buffer zone will be for:

- A. A wetland crossing permitted under MGL c. 131, § 40, and this Chapter 267, the Town of Foxborough Conservation Bylaws; and/or

- B. When the Commission determines that there are no reasonable conditions or alternatives that would allow the project to proceed in compliance with the bylaws; and that the mitigating measures are proposed that will allow the project to be conditioned by the Commission so as to contribute to the protection of the interests identified in MGL c. 131, § 40, and this Chapter 267, the Town of Foxborough Conservation Bylaws.

§ 267-9. Emergencies.

The notice required by § 267-3 of this bylaw shall not apply to emergency projects necessary for the protection of the health and safety of the citizens of Foxborough and to be performed or ordered to be performed by an administrative agency of the Commonwealth or by the Town. Emergency projects shall mean any projects certified to be an emergency by the Commissioner of the Department of Environmental Protection and the Conservation Commission if this bylaw and MGL c. 131, § 40, as amended, are both applicable or by the Conservation Commission if only this bylaw is applicable. In no case shall any removal, filling, draining, dredging or altering authorized by such certification extend beyond the time necessary to abate the emergency.

§ 267-10. Construction near vernal pools.

No activity associated with the construction of new subdivisions (including roadways, drainage or utility systems or individual homes) or individual homes or commercial/industrial projects shall be performed within 100 feet of any certified vernal pool or any isolated wetland which is identified by the Commonwealth of Massachusetts as the habitat of a state listed species. If an addition or renovation to an existing residential structure is proposed within 100 feet of a certified vernal pool, the Conservation Commission will review this activity on a case-by-case basis and issue conditions necessary to provide for maximum protection to the pool in question.

§ 267-11. Rules and regulations.

After public notice and public hearing the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw. Failure by the Conservation 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 bylaw. At a minimum, these regulations shall define key terms in this bylaw, define additional terms not inconsistent with this bylaw, and impose filing and consultant fees.

Article II. Protection of Ponds, Streams and Rivers

[Adopted as Article IX, Sec. 2, of the General Bylaws]

§ 267-12. Purpose.

In recognition of the existence of several aquifers which serve as the sole source of drinking water for the inhabitants of the Town and in recognition of the fact that contamination of any pond, stream, river, surface or subsurface water of Foxborough would pose a significant hazard to the health of the inhabitants of the Town.

§ 267-13. Furnishing of water to tank trucks.

- A. The siphoning of water from any pond, stream, river, watercourse, surface or subsurface water into a tank vehicle is prohibited in Foxborough.
- B. There shall be a public water hydrant or other public water outlet in Foxborough furnishing water to any water tank vehicle used for the mixing, spraying or application of pesticides or herbicides. The said hydrant or outlet shall not allow any backflow into the public water system and shall be under the supervision and control of the Board of Water and Sewer Commissioners.