

HISTORY: Adopted by the Annual Town Meeting of the Town of Blackstone 4-29-1986 by Art. 39. Amendments noted where applicable.]

GENERAL REFERENCES

Soil removal — See Ch. 109.

Zoning — See Ch. 123.

Subdivision of land — See Ch. 191.

§ 119-1. Purpose.

The purpose of this chapter is to protect the wetlands of the Town of Blackstone by prior review and control of activities which would have any adverse impact on wetland values, including, but not limited to the following: public and private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries, shellfish, wildlife habitat, recreation and aesthetics (collectively, the "wetland values protected by this chapter").

§ 119-2. Notice of intent required prior to certain activities.

Except as otherwise provided in § 119-4, no person shall remove, dredge, fill or alter within 100 feet of any wetland, bank, marsh, wet meadow, bog, swamp, creek, river, stream, pond, lake or one-hundred-year floodplain or, when located within the public water supply catchment basin, within 150 feet of the areas listed above without first filing a written notice of intent, including such plans as may be necessary to describe such proposed activity and its effect on the environment, and obtaining and complying with an order of condition issued pursuant to this chapter.

§ 119-3. Definitions.

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

A. As used in this chapter, the following terms shall have the meanings indicated:

ALTER — Includes, without limitation, the following actions when used in areas subject to this chapter:

- (1) Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind.
- (2) Changing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns and flood retention characteristics.
- (3) Drainage or other disturbance of water level or water table.
- (4) Dumping, discharging or filling with any material which may degrade water quality.
- (5) Driving of piles, erection of buildings or structures of any kind.
- (6) Placing of obstructions whether or not they interfere with the flow of water.
- (7) Destruction of plant life, including the cutting of trees.
- (8) Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water.

BANK — That part of the land adjoining any body of water which confines the water.

PERSON — Includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof, administrative agency, public or quasi-public corporation or body or other legal entity or its legal representatives, agents or assigns insofar as subject to this Wetlands Chapter.

WETLAND — Includes any vegetative community consisting of wetland plant species as defined in Massachusetts Wetlands Protection Act (MGL c. 131, § 40, as of July 1978) and/or the substrate is predominantly undrained hydric soils and/or the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year (Army Corps of Engineers Manual for Methodology for Wetland Delineation, 1987). The wetland buffer zone, within 100 feet of a wetland, will be considered under this chapter to be a wetland resource area and will receive the same protection status as marshes, wet meadows, bogs, swamps, streams, rivers, ponds, lakes, banks and bordering vegetated wetlands. **[Amended by 4-25-1994 ATM, Art. 27]**

B. The Commission may adopt additional definitions not inconsistent with this § 119-3 in its regulations promulgated

pursuant to § 119-10 of this chapter.

§ 119-4. Exceptions to applicability.

- A. No application hereunder need be filed for any emergency project necessary for the protection of the health or safety of the citizens of Blackstone to be performed or ordered to be performed by an administrative agency of the commonwealth or by the Town. An "emergency project" shall mean any project certified to be an emergency by the Town of Blackstone Conservation Commission or its authorized representative. In no case shall any removing, dredging, filling or altering commence prior to such emergency certification nor extend beyond the time necessary to abate the emergency. A notice of intent shall be filed and the Conservation Commission shall hold a public hearing within 21 days of certification to consider the project and to impose such remedial conditions as may be necessary.
- B. Persons proposing to maintain, repair or replace, but not substantially change or enlarge, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone or telecommunication services shall request a determination of applicability by the Conservation Commission.

§ 119-5. Request for determination of applicability.

- A. Any person may request the Conservation Commission to make a determination as to whether or not this chapter applies to any area of land or any type of project. This request for a determination of applicability shall include such information and plans as deemed necessary by the Commission to describe proposed activities and their effects on the environment. The application shall be sent by certified mail or hand delivered to the Blackstone Conservation Commission or its authorized representative. If the person making the request is different from the landowner, the owner will be notified of this request. A person delivering this request by hand shall be given a dated receipt.
- B. The Commission shall make a determination within 21 days of the receipt of said request and shall notify the applicant by certified mail of the results of the determination.

§ 119-6. Finding of Conservation Commission.

- A. If the Conservation Commission determines that the subject area is not within the jurisdiction of the Conservation Commission, a written notice of such determination shall be sent to the applicant and, if different, the owner.
- B. If the Conservation Commission after a hearing determines that the activity is not exempt from this chapter, that § 119-2 is applicable to the activity and that it may have an adverse impact on § 119-1 values, the Commission will require the applicant to file a notice of intent. The Commission or its authorized representatives may, for the purpose of carrying out its duties under this chapter, request such plans or information as may be necessary for its evaluation, may enter upon the subject land and may make or require to be made such examination or survey as it deems necessary.

§ 119-7. Filing of notice of intent; filing fees.

- A. Filing procedures for notice of intent. The notice of intent shall be sent by certified mail or hand delivered to the Blackstone Conservation Commission or its authorized representative and shall include such plans and specifications as the Commission may require to consider impacts of the proposed work. At a minimum, the notice of intent, plans and specifications shall meet the requirements of MGL c. 131, § 40. A person delivering notice by hand shall be given a dated receipt.
- B. Filing fees. A filing fee of \$25, payable to the Town of Blackstone, shall accompany each notice. This fee is in addition to the fee required by the Wetland Protection Act, MGL c. 131, § 40. In addition, the Commission is authorized to require the applicant to pay the costs and expenses of any expert consultant deemed necessary by the Commission to review the application or request up to a maximum of \$2,500. The Commission may waive the filing fee when the Town of Blackstone, other government agency or person having no financial connection with the property which is the subject of the request files an application.

§ 119-8. Notice of filing required; public hearing.

- A. Notification of filing. Any person filing an application or a request for determination or a notification of intent under this chapter shall give written notice thereof, by certified mail or hand delivery, to all abutters according to the most recent records of the assessor, including those across a traveled way or body of water, and the owner of the subject property, if different from the applicant, of the filing of such application or request. Such notice shall clearly identify the land on which the work is to be done and describe the general nature of the work and include a copy of the application or request or shall state where copies may be examined. Failure to notify abutters shall constitute good cause for a continuance of the hearing.
- B. Notice of hearing. A public hearing which will be held within 21 days of the filing of a notice of intent. At this time, the applicant will present the project so as the Commission may make reasonable conditions. The public will also be given

an opportunity to voice their concerns. Notice of the hearing shall be given by the Conservation Commission, at the applicant's expense, not less than five days prior to the hearing by publication in a newspaper of general circulation and notice to the applicant, Board of Health and Planning Board. Such hearing may be held in conjunction with any hearing required by MGL c. 131, § 40.

- C. If the Commission determines that additional information is necessary, the hearing may be continued to a future date. If continuance is not agreed upon by the applicant, the hearing shall be closed and action shall be taken on such information as is available.

§ 119-9. Burden of proof.

The applicant shall bear the burden of proving that the work proposed in the notice of intent will not harm the interests protected by this chapter. Failure to provide adequate evidence to the Commission shall be sufficient cause to deny or condition the project.

§ 119-10. Promulgation of additional regulations.

After due notice and public hearing, the Commission may promulgate regulations to effectuate the purposes of this chapter. Failure by the Commission to promulgate such 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.

§ 119-11. Order of conditions.

- A. The Conservation Commission may impose such conditions on any proposed alteration as it deems necessary to protect and preserve the interest covered by this chapter. Such order of conditions shall be in writing and may be identical to any order issued by the Blackstone Conservation Commission under the provision of MGL c. 131, § 40, or successor statutes and shall be issued within 21 days after the close of the public hearing.
- B. Such order of conditions will expire three years from the date of issuance. The Conservation Commission has the right to renew an order of conditions.
- C. Per order of conditions, any new subdivision which proposes construction bordering a wetland and is determined to negatively impact the wetland due to alteration or runoff will be required to provide a construction setback amounting to between 5% and 10% of the subdivision land. This land will border the wetland and will serve to protect the wetland from negative impact. **[Amended by 4-25-1994 ATM, Art. 29]**
- D. No proposed work governed by an order of conditions shall be undertaken until all permits, approvals and variances required by local bylaws have been obtained or applied for.
- E. The final order of conditions issued under this chapter shall be recorded with the registry of deeds for the district in which the land is located. The Conservation Commission shall be notified of the date of recordings. Should the order not be recorded within 60 days, the Conservation Commission shall have the right to do so.

§ 119-12. Denial of permission and setback regulations. [Added 4-29-1991 by ATM, Art. 41]

- A. The Conservation Commission may deny permission for any removing, dredging, filling or altering if, in its judgment, such denial is necessary to protect and preserve the interests identified in § 119-1 of this chapter.
- B. Every proposed building shall have a one-hundred-foot setback from any wetlands, bank, marsh, wet meadows, bog, swamp, creek, river, stream, ford, lake or one-hundred-year floodplain. Any request for a variance of the setback rules shall require an affirmative vote of at least four of the members of the Conservation Commission present and voting. **[Added 4-29-1991 by ATM, Art. 41; amended 5-30-2000 by ATM, Art. 13]**
- C. If the acreage of a minimum-size lot required by present zoning is 75% or more wetland and/or buffer zone, approval of a notice of intent will require an affirmative vote of at least four members of the Conservation Commission present and voting. **[Added by 4-25-1994 ATM, Art. 28; amended 5-30-2000 ATM, Art. 14]**

§ 119-13. Commission may require security.

The Commission may require, as an order of condition, that the performance and observance of other conditions be secured by a bond or deposit of money or negotiable securities in an amount determined by the Commission to be sufficient and payable to the Town of Blackstone upon default.

§ 119-14. Violations and penalties.

Any person who violates any provision of this chapter or of any condition of a permit issued pursuant to it 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; if more than one, each condition violated shall constitute a separate offense. This chapter may be

enforced by 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.

§ 119-15. Prior violations.

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 order pursuant to this chapter shall forthwith comply with any such order or restore such real estate to its condition prior to any such violation; provided, however, that no such action, civil or criminal, shall be brought against such person unless commenced within three years following the date of acquisition of the real estate by such person.