

HADLEY

WETLANDS BY-LAW AS AMENDED

No one shall fill, erect, or otherwise alter any land within 35 feet of a wetland or stream as defined in MGL Chapter 131, Section 40 (the Wetlands Protection Act) and the regulations at 310 CMR S.10.00, except for the normal maintenance or improvement of the land in agricultural or aquacultural use.

This bylaw shall be enforced by the Conservation Commission, which may grant waivers at its sole discretion for access to land or where it finds that the waiver is necessary and that it will not harm the resources protected by this bylaw, or take any action thereto.

In addition to any other remedy available in law or in equity, any person who violates any provision of this bylaw or any order of the Conservation Commission issued thereunder may, solely at the option of the Conservation Commission, be subject to non-criminal prosecution pursuant to MGL Chapter 40, Section 21D, in which case the Commission may apply the penalties listed below. The Commission may treat each day and/or each violation as a separate offense. This bylaw may be enforced by the Conservation Commission, by its agents, by a Commissioner so authorized by vote of the Commission, or by any police officer of the town.

First offense	\$50.00
Second offense	\$100.00
Third and subsequent offense	\$200.00

The Conservation Commission may adopt rules and regulations for the administration of this bylaw after a public hearing.

The intent of these regulations is to explain why the 2008 bylaw mandating a 35-foot setback of undisturbed vegetation is necessary to buffer wetlands and streams from the impact of development, and provide some details on how the setback is administered. The bylaw reflected ten years of Commission policy already in place, administered using guidelines. The regulations are adopted by the Hadley Conservation Commission in response to the state Appeals Court ruling in its 2009 decision in Westwood calling for clear and detailed bylaw standards. The court's aim was to encourage cities and towns with local wetlands protection ordinances and bylaws to explain and administer them fairly.

1. Although the state Wetlands Protection Act (General Laws ch. 131, s. 40) is intended to protect a variety of resource areas, including wetlands and streams, the Act and its regulations (310 Code of MA Regulations 10.00) contain no provision for protecting buffer areas around the various resource areas. The 100-foot area around most of the resources described in the regulations is purely jurisdictional and only dictates who must file a permit application with the local conservation commission. The Hadley bylaw fills the gap with respect to wetlands and streams by providing a 35-foot no-disturb area within the hundred feet. This bylaw is intended to provide more stringent protection than the state law.

2. The Hadley Conservation Commission believes that work right at the edge of a wetland or stream will ultimately alter those resource areas. This belief is derived from the experiences of commissions, from studies collected by the Massachusetts Association of Conservation Commissions, and from the state Department of Environmental Protection's (DEP's) statements in the Preface to the wetlands regulations' 2005 revisions. The Preface states that "research on the functions of buffer zones and their role in wetlands protection has clearly established that buffer zones play an important role in the preservation of the physical, chemical and biological characteristics of the adjacent resource area." The Preface further concludes that "clearing of natural vegetation and soil disturbance [in buffer areas] is likely to alter the physical characteristics of resource areas by changing their soil composition, topography, hydrological, temperature and the amount of light received...." Biological changes may include "changes in plant community composition and structure, invertebrate and vertebrate biomass and species composition, and nutrient cycling....through the disruption and erosion of soil, loss of shading, reduction in nutrient inputs and changes in litter and soil composition that filters runoff, attenuating pollutants and sustaining wildlife habitat within resource areas." The Hadley Conservation Commission has also noted direct damage from careless construction work and use of vehicles and damage to water quality and siltation from stormwater runoff that overcomes runoff controls.

3. Buffering very small wetlands not bordering on streams is important if those small areas qualify as vernal pools according to common scientific standards. Otherwise, the Commission believes that buffering wetlands of less than 400 square feet has limited value compared to the difficulties of enforcement and therefore exempts them.

4. The Commission believes that natural or constructed stormwater detention and retention basins with capacity of 400 square feet or more are valuable for controlling flooding and often have other values such as providing wildlife habitat. The 35-foot setback is therefore applied to such basins except that renovation of the basins may be carried out without a formal permit from the Commission if the owners agree to reconstruct them with forebays, where feasible, to minimize the need for future disturbance.

5. The Commission selected 35 feet for its setback as a reasonable compromise between the 50 feet preferred by DEP and other authorities and the 25-foot standard adopted by DEP for work in developed

Riverfront areas and in agricultural lands along rivers under the River Act. The 35-foot standard also recognizes the problems of landowners in 30,000 square foot residential lots, the commonest lot size under town zoning.

6. The 35-foot setback is applied to all projects in every part of town because the Commission believes a prohibitive setback that is uniform in application gives the clearest direction to landowners and the public as to what is allowed and what is not allowed, in advance of purchase of land and planning for development.

7. The bylaw permits the Commission to give variances in a few circumstances, provided proper protection is preserved. The commonest variance is for crossing wetlands and streams to reach upland of the same owner or for work deemed harmless if done carefully, such as temporary disruption during building or minor rearrangement of landforms. Variances may also be granted where complete compliance is not feasible or where insisting on complete compliance would cause a "regulatory taking" removing substantially all of the value of the land.

8. Because the bylaw is relatively new and limited in coverage, the Commission is currently reviewing every application under the bylaw, even when the Notices or Requests do not so require. No new forms are required. If this approach causes confusion, it will be reviewed for change at the end of 2010.