

2014 Spring Town Meeting

CHAPTER 215. WETLANDS (Proposed)

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§ 215-1. Purpose and intent.

Groton's extensive and complex wetland systems are fundamental to its landscape, ecology, drinking water supplies and flood protection. The protection of wetlands in Groton is critical to the well-being and character of the community.

Groton's wetlands, natural landscape, and ecosystem are largely byproducts of an unusual concentration of glacial landforms, including extensive areas of ice channel fillings, drumlins, ground moraines and the remnants of Glacial Lake Nashua. In addition, deep bedrock valleys filled with glacial sediments define the courses of the Nashua and Squannacook Rivers. This concentrated and complex set of landforms created intricate and varied topography, soils and hydrology, resulting in an extraordinary array of wetlands, ponds, vernal pools, and streams.

All of Groton's drinking water is derived from municipal or private wells. The groundwater that supplies these wells is intimately connected with these wetland systems, which filter, cleanse, and infiltrate water. The protection of both the wetlands themselves and their surrounding lands is essential to the protection of Groton's drinking water.

Groton's complex hydrological hydrologic systems and associated upland areas are also central to its rich and diverse ecosystem, including concentrations of rare and endangered species. Approximately two thirds of Groton lies within with state designated Estimated and Priority Habitats for Rare and Endangered Species. The Massachusetts BioMap 2 project designates 67% of Groton as Core Habitat or Critical Natural Landscape. And approximately 88% of Groton has been designated as Areas of Critical Environmental Concern. All of these speak to both the local and the regional importance of Groton's wetlands.

The purpose of this chapter is to protect the wetlands, related water resources, and adjoining land areas in the Town of Groton by controlling activities determined by the Conservation Commission to be likely to have a significant or cumulatively detrimental effect upon any wetland resource area or value protected by this chapter, including but not limited to the following interests and values; protection of public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, fisheries, wildlife and wildlife habitat, rare plant or animal species and habitat, agriculture and aquaculture, recreation and aesthetic values. To that end, it is the intent of this chapter to protect additional wetland resource areas and interests, and to impose additional standards and procedures stricter than those of the Wetlands Protection Act, MGL C. 131, § 40.

§ 215-2. Jurisdiction.

Except as permitted by the Conservation Commission or as provided in this chapter, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into or otherwise alter any of the following resource areas protected by this chapter (collectively, "wetland resource areas"): any wetland, including, but not limited to, any freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, creek, beach or bank, reservoir, lake, pond of any size, land under any water body or within 100 feet of any of the aforesaid resource areas; any river or stream, including land within 200 feet of same; or any land subject to flooding or inundation by stormwater, groundwater or surface water.

§ 215-3. Exceptions.

A. This chapter shall not apply to any emergency project or agricultural emergency as defined in the Wetlands Protection Act, MGL C. 131, § 40, or regulations thereunder. No application or permit shall 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, sewer, water, telephone, telegraph, or other telecommunications service, provided that written notice has been given to the Commission prior to commencement of work, and provided that all work conforms to performance standards and design specifications in the regulations adopted pursuant to this chapter.

B. Notwithstanding any provision of this chapter to the contrary, the alteration of any existing residential, business or institutional building or Customary Physical Appurtenance thereto (i.e., in an area that has already been altered) within an adjacent upland resource shall be regulated per the provisions of the Presumptions and standards as defined in Section §215-7.A.(3).

§ 215-4. Application.

A. Permit application (notice of intent, request for determination of applicability, abbreviated notice of resource area delineation).

(1) Written application shall be filed with the Commission to perform activities in or affecting resource areas protected by this chapter. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this chapter. No activities shall commence without receiving and complying with a permit issued pursuant to this chapter.

(2) The Commission may, where it deems it appropriate, accept as the permit application and plans under this chapter the notice of intent, request for determination of applicability, abbreviated notice of resource area delineation and plans required to be filed under the Wetlands Protection Act, MGL C. 131, § 40, and regulations thereunder, at 310 CMR 10.00 et seq.

B. Request for determination of applicability (RDA) 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 of applicability (RDA) from the Commission. Such a request for determination of applicability shall be submitted in such form as is required by regulations adopted hereunder, and may include such information and plans in addition to that required under the Wetlands Protection Act as are deemed necessary by the Commission.

C. Coordination with other boards. Any person filing a permit application with the Commission shall at the same time provide such copies of same in the number and manner provided in the regulations to such Town boards and/or officers as the regulations provide. The Conservation Commission shall transmit notice of the application and plan to the Board of Selectmen, Board of Health, Planning Board, Department of Public Works, Groton Water Department and West Groton Water Supply District, and the Earth Removal Stormwater Advisory Committee, for their written recommendations. Failure to respond to the Conservation Commission within 10 days shall indicate no concerns by said agencies.

D. Fees.

(1) Application fee. At the time of a permit application or RDA, or application for certificate of compliance, the applicant shall pay a filing fee specified in regulations hereunder. The fee is in addition to that required by the

Wetlands Protection Act. The fee shall be deposited in a special account established pursuant to Chapter 64 of the Acts of 2001, from which the Commission may withdraw funds without further appropriation for use only for wetland protection activities.

(2) Consultant fee. Upon receipt of a permit application or RDA, or at any point during the hearing process, the Commission may 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 to assist the Commission in reaching a final decision on the application. The specific consultant services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeological and drainage analysis; and researching environmental or land use law. The Commission may adopt regulations providing for the deposit of such funds in a special account established pursuant to Chapter 64 of the Acts of 2001, which provides for the administration of the consultant fee funds in the same manner as provided in MGL C. 44, § 53G.

(3) The Commission may waive the filing fee, consultant fee, and/or costs and expenses for a permit application or RDA filed by a Town officer or agency.

§ 215-5. Permits and conditions.

A. If the Commission, after a public hearing, determines that the activities which are subject to the permit application, or the land and water use which will result therefrom, are likely to have a significant individual or cumulative effect upon the wetland resource area values and interests protected by this chapter, the Commission shall, within 21 days of the close of said hearing, issue or deny an order of conditions for the activities requested.

B. In any order of conditions it issues, the Commission shall impose conditions which it deems necessary or desirable to protect such values and interests, and all activities shall be done in compliance with those conditions. In imposing conditions, the Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, which have resulted from past activities, permitted and exempt, or which may result from foreseeable future activities.

C. The Conservation Commission may grant an order of conditions for projects within wetland resource areas if it determines that the granting of such an order of conditions will result in a significant public or environmental benefit and that, because of the characteristics of the land, the proposed alterations, and/or proposed mitigation measures, the interests of this chapter will be maintained.

D. The Commission is empowered to deny a permit for the applicant's failure to meet the requirements of this chapter; to submit necessary information and plans requested by the Commission; to meet the design specifications, performance standards, and other requirements in regulations of the Commission; to avoid or prevent unacceptable significant or cumulative effects upon the wetland resource areas or interests protected by this chapter; or where it finds that no conditions are adequate to protect such values and interests.

§ 215-6. Notice and hearing/meeting.

A. Any person filing a permit application (notice of intent or abbreviated notice of resource area delineation) with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested), by certificates of mailing, or hand-delivered, to all abutters at their mailing addresses as shown on the most recent applicable tax list of the Assessors, including owners of land directly opposite on any public or private street or 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 have enclosed a copy of the permit application 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. A Request for Determination of Applicability does not require a formal public hearing; therefore abutters notifications are not required as part of an RDA filing. However, a legally noticed public meeting is required to review an RDA. When a person requesting a determination of applicability is other than the owner, the notice of the public meeting 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 otherwise commence its public hearing or meeting within 21 days of the receipt of a completed notice of intent, request for determination of applicability or abbreviated notice of resource area delineation, provided that written notice thereof has been provided, at the expense of the person making the request, at least five business days prior to said hearing or meeting by publication in a newspaper of general circulation in the town. Said time period may be extended if authorized in writing by the applicant.

C. The Commission may, in the exercise of its reasonable discretion, and with the permission of the Applicant, continue the hearing from time to time to a date certain announced at said hearing for reasons stated, which reasons may include but are not limited to: curing any defect in notice; allowing additional testimony or documents as may be deemed necessary or appropriate by the Commission; and/or obtaining comment or recommendation of any municipal board or officer referred to in § 215-4 above. If permission for a continuance is not granted the Commission may deny the permit if it believes that important information is not available.

D. In all other respects, hearings shall be as provided in MGL C. 131, § 40, and regulations thereunder.

§ 215-7. Presumptions.

A. Adjacent upland resource areas are presumed significant to the protection of wetland resources and interests because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resources, either immediately, as a consequence of construction, or over time, as a consequence of daily operations or maintenance of such activities. Such adverse impacts from construction and use include, without limitation, erosion, siltation, loss of groundwater recharge, degradation of water quality and loss of wildlife habitat.

(1) Prohibited activity. For the aforementioned reasons, the adjacent upland areas, within 200 feet of rivers and streams and 100 feet of other wetland resource areas protected by this chapter, are deemed valuable resources under this chapter. Therefore this chapter strictly limits any disturbance within adjacent upland areas by prohibiting the following activities or uses unless approved and done in compliance with the Regulations and standards adopted under this chapter:

(a) Disturbance of any existing vegetation within 50 feet of any freshwater wetland, except for removal of invasive vegetation only.

(b) Erection of permanent buildings, including, but not limited to, barns, garages, or attached structures.

(c) Construction of parking lots or use of land for parking of motor vehicles.

(d) Construction or installation of any portion of a new sanitary waste disposal system, including the grading required for the primary and reserve systems.

(e) Placement or maintenance of dumpsters or refuse containers.

(f) Construction of driveways or retaining walls

(h) Grading, except for minor grading as defined in the Regulations adopted under this chapter.

(2) Order of conditions. The following activities may be allowed within adjacent upland areas by an order of conditions and subject to such conditions as the Commission deems necessary or appropriate to preserve the wetland resource areas and interests protected by this chapter:

(a) Planting of native vegetation or habitat management techniques determined by the Conservation Commission to enhance the wetland values protected by this chapter.

(b) Construction and maintenance of unpaved access paths of not more than four feet in width for nonmotorized usage.

(c) Maintenance of existing structures, utilities, stormwater management structures and paved roads.

(d) Pruning for the purpose of vista maintenance, or for removal of diseased or invasive vegetation, if done in compliance with standards provided in the regulations.

(e) Construction of new utility lines where the Commission determines that the proposed route is the best environmental alternative.

(f) Sanitary waste disposal system maintenance and, if a system has failed, repair or replacement meeting local and state standards, provided that the maximum feasible buffer is maintained.

(g) Construction of an accessory structure associated with an existing building where the Commission finds that no practicable alternative site outside the adjacent upland area is available; the size and impact of the proposed structure have been minimized; and the structure is located so as to minimize impact on the resource area.

(h) Limited project as defined in the Wetlands Protection Act.

(3) Standards for altered areas: Within an adjacent vegetated upland resource with existing residential, business, commercial or institutional buildings or Customary Physical Appurtenances the Commission may issue an Order of Conditions for a project, provided that it finds that the proposed alterations will not have significant adverse impacts on that specific portion of the adjacent upland area or associated wetlands and that there is no reasonable construction alternative that would reduce impacts to the resource area.

B. Seasonal wetlands are presumed to provide essential breeding and rearing habitat functions, which presumption, in the case of any seasonal wetland which has not been certified as a vernal pool by the Massachusetts Division of Fisheries and Wildlife, may be overcome by demonstration to the Commission by a preponderance of credible evidence that the basin, depression or area does not provide the habitat functions specified in the bylaw and regulations for identification of noncertified vernal pools.

§ 215-8. Regulations.

After public notice and public hearing, the Commission may promulgate regulations to effectuate the purposes of this chapter, and to provide for filing fees and procedures, and for consultant fees as the Commission deems necessary or appropriate. Failure to promulgate such regulations, or the invalidation by a court of law of one or more of such regulations, shall not act to suspend or invalidate any provision of this chapter.

§ 215-9. Definitions.

A. Except as otherwise provided in this chapter or regulations of the Commission, the definitions of terms in this chapter shall be as set forth in the Wetlands Protection Act, which terms, as used herein, shall include the provisions of MGL C. 131, § 40, and regulations thereunder at 310 CMR 10.00 et seq (WPA).

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

ABBREVIATED NOTICE OF RESOURCE AREA DELINEATION (ANRAD)

This form (WPA Form 4A) provides a procedure for an applicant to confirm the precise boundaries of Bordering Vegetated Wetlands (BVW) or other resource areas.

ADJACENT UPLAND RESOURCE AREA

Shall include lands within 100 feet of any freshwater wetland; marsh; flat; wet meadow; bog; swamp; vernal pool; bank; reservoir, lake or pond of any size; creek, beach or land under water bodies, and lands within 200 feet of rivers and streams.

ALTER

Shall include, without limitation, the following activities when undertaken to, upon, within or affecting wetland resource areas protected by this chapter:

- (1) Removal, excavation, or dredging of soil, sand, gravel, or earth materials of any kind;
- (2) Changing of preexisting drainage characteristics, flushing characteristics, salinity concentration, sedimentation patterns, flow patterns, or flow 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) Placing of fill, or removal of material, which would alter elevation;
- (6) Erecting or placing buildings or structures of any kind, including driving of piles;
- (7) Placing of obstructions in water;
- (8) Cutting or destruction of vegetation, including cutting of trees;
- (9) Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters;
- (10) Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater; and
- (11) Incremental activities that have, or may have, a cumulative adverse impact on the resource areas protected by this chapter.

BANK

Shall include 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 or the mean annual flood level, whichever is higher.

BUILDING:

A structure having a roof or cover and forming a shelter for persons, animals or property.

CUSTOMARY PHYSICAL APPURTENANCE

Any structural adjunct to a residential, commercial, business or institutional building including but not limited to septic systems, garages, sheds, decks, porches, driveways, sidewalks, wells and associated piping and pumping equipment, stairways, retaining walls, docks, lawns, gardens, and landscaped and other developed areas.

FRESHWATER WETLAND

Shall include all wetlands whether or not they border on a water body. For the purposes of this chapter, lakes or ponds of any size, all bordering vegetated wetlands, as well as isolated vegetated wetlands shall be protected.

NOTICE OF INTENT (NOI)

This form (WPA Form 3) is filed by an applicant who proposes to do work within 100 feet of a wetland resource area or 200 feet of a stream protected by the Massachusetts Wetland Protection Act or the Groton Wetlands Protection Bylaw.

PERSON

Shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, administrative agency, public or quasi-public corporation or body, including the Town of Groton, and any other legal entity, its legal representatives, agents, or assigns.

RARE SPECIES

Shall include, without limitation, all vertebrate and invertebrate animal and 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.

REQUEST FOR DETERMINATION OF APPLICABILITY (RDA)

This form (WPA Form 1) is filed by a person desiring to know whether or not a proposed activity, or an area, is subject to this chapter. A Request for Determination of Applicability can also be filed by any concerned citizen of Groton who wishes to know if wetlands exist within 100 feet of a site proposed for development. Minor projects within the 100-foot Buffer Zone are also considered under this filing category.

SEASONAL WETLAND

Shall include any confined basin or depression subject to flooding or inundation and which contains temporary bodies of water during periods of high groundwater level, spring runoff, snowmelt, or heavy precipitation, for a minimum of two continuous months during spring or summer in most years and which are capable of supporting populations of obligate vernal pool species, and are therefore presumed to provide essential breeding and rearing habitat functions for amphibian, reptile, or invertebrate species.

STREAM

Shall include all rivers and streams shown on the current U.S.G.S. map.

STRUCTURE

Any construction, erection, assemblage, or other combination of materials upon the land made in such a manner as to indicate a purpose that it remains in position indefinitely.

VERNAL POOL

(1) Shall include any confined basin or depression which, at least in most years, holds water for a minimum of two continuous months during spring and/or summer, and which is free of adult predatory fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, and presumptively includes seasonal wetlands, regardless of whether the site has been certified as a vernal pool by the Massachusetts Division of Fisheries and Wildlife.

(2) The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case, the adjacent upland resource area for vernal pools shall not extend over lawns, gardens, and landscaped or developed areas existing as of the effective date of this chapter.

§ 215-10. Security; site inspections.

A. 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 thereunder, including conditions requiring mitigation work, be secured wholly or in part by one or more of the following methods:

(1) 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 insure completion of proposed work or conditions of any permit, said security to be released in whole or in part upon issuance of a certificate of compliance for work performed pursuant to the permit.

(2) By conveyance, with consent of the applicant, of 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 Groton, acting through the Conservation Commission, and providing that the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

B. It shall be a condition of every application for a permit or RDA that the applicant assent to the entry by the Commission or its agent to the subject property at reasonable times for the purpose of conducting site inspections to determine wetland boundaries and the compliance with or violation of this chapter or any permit or determination thereunder.

§ 215-11. Enforcement.

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 leave in place unauthorized fill, 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.

B. The Commission, its agents, officers, and employees shall have authority 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, subject to the Constitutions and laws of the United States and of the Commonwealth of Massachusetts. Permission to enter land of any applicant shall be granted as a condition of any application and of any permit issued hereunder.

C. The Commission is authorized to enforce this chapter and its regulations, and any orders or permits issued thereunder, by violation notices, administrative orders, and/or civil and criminal court actions. Any person who violates any provision of this chapter may be ordered to restore the property to its original condition, to take such other action as deemed necessary by the Commission to remedy such violation, or may be fined, or any combination of the foregoing.

D. In addition to any other remedy available in law or in equity, any person who violates any provision of this chapter, regulations, permits, or order of the Conservation Commission issued thereunder, may, at the option of the Conservation Commission, be subject to noncriminal prosecution pursuant to MGL C. 40, § 21D, in which case the following penalties shall apply, with each day constituting a separate offense:

(1) First offense: \$50.

(2) Second offense: \$100.

(3) Third and subsequent offense: \$300.

E. The provisions of this chapter and regulations, or of any permit or order issued thereunder, may be enforced by the Conservation Commission, by its agents, by a Commissioner so authorized by vote of the Conservation Commission, or by any police officer of the Town.

§ 215-12. Burden of proof.

The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area 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.

§ 215-13. Appeals.

A decision of the Commission shall be reviewable on the record of proceedings in Superior Court in accordance with MGL C. 249, § 4.

§ 215-14. Relationship to state statute.

This chapter is adopted pursuant to the Town of Groton's Home Rule powers and is independent of the Wetlands Protection Act, MGL C. 131, § 40 and/or regulations thereunder (WPA). It is the intent of this chapter to create resource areas, interests, definitions and performance standards that impose more stringent regulation than that imposed by MGL C. 131, § 40.

§ 215-15. 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 issued hereunder.