

I. GENERAL PROVISIONS

A. Introduction

These regulations are promulgated by the Amherst Conservation Commission pursuant to the authority granted to the Commission under Section 8 of the Town of Amherst Wetlands Protection Bylaw. These rules and regulations complement and amplify the bylaw and shall have the force of law upon their effective date.

B. Purpose

1. The Amherst Wetlands Protection Bylaw sets forth a public review and decision-making process by which activities affecting resource areas subject to protection under the bylaw are to be regulated in order to contribute to the following interests (collectively the “resource interests protected by this bylaw”):
 - a. protection of public and private water supply
 - b. protection of groundwater
 - c. flood control
 - d. erosion and sedimentation control
 - e. storm damage prevention
 - f. protection of water quality
 - g. water pollution control
 - h. protection of wildlife habitat
 - i. protection of rare species habitat
 - j. protection of agricultural value
 - k. protection of aquacultural value
 - l. protection of recreation value
2. These regulations serve to implement the Amherst Wetlands Protection Bylaw by establishing standard definitions, uniform procedures, design specifications, and performance standards by which the Commission may carry out its responsibilities under the bylaw.

C. Statement of Jurisdiction

1. Areas Subject to Protection under the Bylaw
 - a. any freshwater wetland, marsh, wet meadow, bog, swamp, isolated wetland, vernal pool, bank, reservoir, pond, intermittent stream, or watercourse;
 - b. any land within 100 feet of the areas set forth in Sec.I. C.1.a above;
 - c. any river or perennial stream;
 - d. any land within 200 feet of the water bodies set forth in Sec.I. C.1.c above;
 - e. any water within the water bodies set forth in Sec.I. C.1.a and Sec. I. C.1.c. above;
 - f. any land under any of the water bodies set forth in Sec.I. C.1.a and Sec.I. C.1.c above;

- g. any land subject to flooding or inundation by groundwater, surface water, or storm flowage;
- h. any land within 100 feet of any land subject to flooding or inundation as set forth in Sec. I. C.1.g above.

2. Activities Subject to Regulation Under the Bylaw

- a. Any activity proposed or undertaken which constitutes removing, filling, dredging, building upon, degrading, discharging into, or otherwise altering any areas specified in Section I. C.1 above is subject to regulation under the bylaw and requires the filing of a Notice of Intent (NOI).
- b. Any person desiring to know whether or not a proposed activity or an area is subject to the bylaw may request in writing a determination from the Commission. Such a Request for Determination (RFD) shall be submitted pursuant to Section III. C of these regulations.

D. Exceptions and Variances

1. Conditional Exceptions

- a. The application and permit required by the bylaw 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, or sanitary or storm sewers, provided that written notice has been given to the Commission prior to the commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
- b. The application and permit required by the bylaw shall not be required for work performed for normal maintenance or improvement of land which is lawfully in agricultural use at the time the work takes place, 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.
- c. The application and permit required by the bylaw shall not be required for emergency projects necessary for the protection of the health and 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 the commencement of the work or within 24 hours after commencement; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by the bylaw. 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. The application and permit required by the bylaw shall not be required for exemptions under the Rivers Act (310 CMR 10.58[6]).

- e. Other than stated in this section, the exceptions provided in the Wetlands Protection Act (G.L. Ch. 131 Sec. 40) and regulations (310 CMR 10.00) shall not apply under the bylaw.

2. Variances

- a. The Commission shall have the power, after the filing for a permit and the conduct of a public hearing in accordance with Section III, to grant with respect to a particular project a variance from the terms of the bylaw. A variance will be granted only when the Commission finds, based on clear and convincing evidence adduced by the applicant, that owing to circumstances relating to the soil conditions, hydrological conditions, topography of such land and especially affecting such land but not affecting generally wetlands in the Town, a literal enforcement of the provisions of the bylaw would involve substantial hardship to the applicant. In addition, the applicant must demonstrate that desirable relief may be granted without material detriment to the values protected by the bylaw and without substantially derogating from the intent or purpose of the bylaw. Such variances are intended to be granted only in rare and unusual cases. It shall be the responsibility of the applicant to provide the Commission with any and all information which the Commission may request in order to enable the Commission to ascertain any such material detriment to the values protected by the bylaw. The failure of the applicant to furnish any of the information so requested shall result in the denial of a request for a variance pursuant to this subsection.
- b. The Commission may impose conditions, safeguards, and limitations in a variance to protect further the interests protected by the bylaw or the intent or purpose of the bylaw.
- c. A variance shall expire on a date specified by the Commission, not later than three years from the date of issuance of the permit, and may be reestablished only after notice and a new hearing pursuant to this section.

E. **Burden of Going Forward and Burden of Proof**

- 1. The applicant shall have the burden of going forward by providing credible evidence from a competent source in support of all matters asserted by the applicant in accordance with the burden of proof pursuant to Sec. I. E.2 below.
- 2. The applicant shall have the burden of proving by a preponderance of the credible evidence that the activities proposed in the application will not have a significant or cumulative effect on the values protected by the bylaw. Failure to meet the burden of proof shall be cause for the Commission to deny the application for permit, along with any work or activity proposed herein.