



TOWN OF WARE, MASSACHUSETTS
OFFICE OF THE TOWN CLERK

126 MAIN STREET, WARE, MASSACHUSETTS 01082

NANCY J. TALBOT
TOWN CLERK

CERTIFIED COPY OF VOTE

At a legal meeting of the qualified voters of the Town of Ware, held on Monday – October 29, 2007, the following action was taken under:

ARTICLE 20: Voted with a Majority in favor to amend the Ware Town ByLaws and add as Chapter 30, Section 30-3 Ware Conservation Commission Local Wetlands Protection ByLaw and adopt Article 20 proposed by the Ware Conservation Commission as printed in the October 29, 2007 Special Town Meeting Warrant posted October 11, 2007:

1. Purpose

A. The purpose of this chapter is to protect the wetlands, related water resources and adjoining land areas in the Town of Ware by controlling activities deemed by the Ware Conservation Commission (hereafter “the Commission”) likely to have a significant or cumulative effect upon wetland values, including but not limited to the following (in no particular order):

- 1. Public or private water supply**
- 2. Groundwater and groundwater quality**
- 3. Surface water and surface water quality**
- 4. Flood control**
- 5. Erosion and sedimentation control**
- 6. Storm damage prevention**
- 7. Prevention of water pollution**
- 8. Storm drainage**
- 9. Fisheries**
- 10. Wildlife habitat**
- 11. Rare species habitat including rare plant and animal species**
- 12. Agriculture**
- 13. Aquaculture**
- 14. Recreation**

B. These values are to be known collectively as the *Wetland Values* protected by this chapter.

II. Jurisdiction

A. Except as permitted by the Ware Conservation Commission or as provided for in this chapter, no person shall remove, fill, dredge, build upon or alter the following resource areas; or within 100 feet of these resource areas, an area known as the "buffer zone to the resource areas":

- 1. Any freshwater wetland as determined by vegetational community, soil composition and/or hydrologic regime, including isolated wetlands, any marsh, wet meadow, bog or swamp;**
- 2. Any pond, lake, river and any perennial or intermittent stream;**
- 3. Any land under such waters;**
- 4. Any bank or beach;**
- 5. Any land subject to flooding or inundation by groundwater, water or storm flowage, including ephemeral ponds, vernal pools and kettle holes.**

B. Where natural vegetation is absent as a result of mowing, grazing or disturbance, the hydric soil type indicated on United States Soil Conservation Service maps, supplemented by field investigation of hydric soil profiles and application of the Soil Conservation Service's definitions and criteria for hydric soils, shall provide positive determination of jurisdiction.

The jurisdiction of this bylaw shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04.

III. Exemptions & Exceptions

A. Existing public service structures or facilities

- 1. The application and permit required by this chapter shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing or lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services, sanitary sewers and storm sewers, provided that:**
 - a. The structure or facility is not substantially changed or enlarged;**
 - b. Written notice has been given to the Commission at least two working days prior to commencement of work; and**
 - c. The work conforms to performance standards and design specifications in regulations adopted by the Commission.**

- 2. This exception does not apply to septic systems, new or otherwise.**

B. Emergency projects for protection of the public

1. **The application and permit required by this chapter shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that:**
 - a. **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;**
 - b. **Advance written notice, or oral followed by written, has been given to the Commission prior to commencement of work or within 24 hours after commencement;**
 - c. **The Ware Conservation Commission or its agent certifies the work as an emergency project;**
 - d. **The work is performed only for the time and place certified by the Ware Conservation Commission for the limited purposes necessary to abate the emergency; and**
 - e. **Within 21 days of commencement of an emergency project, either a permit application shall be filed with the Commission for review as provided in this chapter or an as-built plan shall be filed with the Commission, whereupon the Commission may, after notice and public hearing, require restoration, project modification and mitigation measures to protect the values stated in this chapter.**

2. **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.**

IV. Applications and Fees

Written application shall be filed with the Ware Conservation Commission to perform activities affecting resource areas protected by this bylaw. 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 bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the application and plans under this bylaw any application and plans filed under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00), but the Commission is not obliged to do so.

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a Request for Determination of Applicability (RDA) or Abbreviated Notice of Resource Area Delineation (ANRAD) filed under the Act shall include information and plans as are deemed necessary by the Commission.

At the time of an application, the applicant shall pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act and regulations.

V. Notice & Hearings

Any person filing a permit or other application or RDA or ANRAD or other request with the Ware Conservation Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses 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 shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters also shall include a copy of the application or request, 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. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any permit application, RDA, or ANRAD with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the municipality. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application, RDA, or ANRAD unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or other relevant sources as deemed necessary by the Commission in its discretion, based on comments and recommendations of other boards and officials.

The Commission shall issue its permit, other order or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (G.L. Ch.131 §40) and regulations (310 CMR 10.00).

VI. Permits & Conditions

If the Ware Conservation Commission, after a public hearing, determines that the activities which are subject to the permit application, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative effect on the resource area values protected by this bylaw, the Commission, within

21 days of the close of the hearing, shall issue or deny a permit for the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities.

If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect said resource area values, and all activities shall be conducted in accordance with those conditions. Where no conditions are adequate to protect said resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of this bylaw. It may also deny a permit: for failure to submit necessary information and plans requested by the Commission; for failure to comply with the procedures, design specifications, performance standards, and other requirements in regulations of the Commission; or for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this bylaw. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

In reviewing activities within the buffer zone, the Commission shall presume the buffer zone is important to the protection of other resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw.

In reviewing activities within the riverfront area, the Commission shall presume the riverfront area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the

applicant, in addition to meeting the otherwise applicable requirements of this bylaw, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication.

The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).

The Commission shall presume that all areas meeting the definition of "vernal pools" under §VIII of this bylaw, including the adjacent area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations.

A permit, Determination of Applicability (DOA), or Order of Resource Area Delineation (ORAD) shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely,

or until permanent protection is in place, and shall apply to all present and future owners of the land.

For good cause the Commission may revoke any permit, DOA, or ORAD or any other order, determination or other decision issued under this bylaw after notice to the holder, the public, abutters, and town boards, pursuant to §V, and after a public hearing.

Amendments to permits, DOAs, or ORADs shall be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.

The Commission in an appropriate case may combine the decision issued under this bylaw with the permit, DOA, ORAD, or Certificate of Compliance (COC) issued under the Wetlands Protection Act and regulations.

No work proposed in any application shall be undertaken until the permit, or ORAD issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded. If the applicant fails to perform such recording, the Commission reserves the right to issue an Enforcement Order for failure to comply with recording, or may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.

VII. Regulations

After public notice and public hearing, the Ware Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw, effective when voted and filed with the town clerk. Failure by the 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 reiterate the terms defined in this bylaw, define additional terms not inconsistent with the bylaw, and impose filing and consultant fees.

VIII. Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw:

Agriculture: refer to the definition as provided by G.L. Ch. 128 §1A.

Alter: without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- a. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind

- b. Changing of preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics
- c. Drainage, or other disturbance of water level or water table
- d. Dumping, discharging, or filling with any material which may degrade water quality
- e. Placing of fill, or removal of material, which would alter elevation
- f. Driving of piles, erection, expansion or repair of buildings, or structures of any kind
- g. Placing of obstructions or objects in water
- h. Destruction of plant life including cutting or trimming of trees and shrubs
- i. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters
- j. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater
- k. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw
- l. Excavation for the purpose of percolation or deep hole testing or the crossing of a Resource Area with heavy equipment for this purpose
- m. Shading.

Alternative Analysis: The applicant shall prove by a preponderance of the evidence that there are no practicable and substantially equivalent economic alternatives to the proposed project with less adverse effects on any Wetland Resource Areas.

ANRAD: Abbreviated Notice of Resource Area Delineation. The ANRAD (Form 4A) provides a procedure for an applicant to confirm precise boundaries of Wetland Resource Areas.

Application: Notice of Intent, Request for Determination and Abbreviated Notice of Resource Area Delineation

Bank: 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.

BMP: Best Management Practices means the most up-to-date technology or the best designs, measure, or engineering or bioengineering practices that have been developed and that are commercially available.

Buffer Zone: Buffer Zone means that area of land extending one hundred (100) feet horizontally outward from the boundary of any Resource Area, including vernal pools, except Land Subject to Flooding and Riverfront Area, (which have no Buffer Zones), and as described in Section 10.02 of the Wetlands Protection Act.

Commission: means Ware Conservation Commission; that body comprised of members lawfully appointed pursuant to MGL CH. 40 Sec. 8C.

Conditions: means those requirements set forth in a written Permit issued by the Commission for the purpose of permitting, regulating, or prohibiting any activity that removes, fills, dredges, builds upon, or alters any Resource Area.

DEP: Massachusetts Department of Environmental Protection

Ephemeral Pool: means an isolated depression or closed basin, which can be isolated and have water year round. An Ephemeral Pool generally confines water during periods of high water table and high input from spring runoff, snowmelt, or heavy precipitation, and serves as Vernal Pool habitat. It is an essential breeding site for certain amphibians, which require isolated areas that are generally flooded for at least two continuous months in the Spring and/or Summer. Most of these amphibians remain near the breeding pool during the remainder of the lifecycle. Many reptiles, birds, and mammals also feed here.

Erosion Control: means the process and the prevention of the wearing away of land by running water, gravity, waves, wind, ice, abrasion and transportation.

Extension Permit: means a written permission issued by the Commission extending the time within which an authorized activity shall be completed.

Flood Plain: the area adjacent to a watercourse or a drainage way subject to flooding when the watercourse may overflow its normal channel.

Hydric Soils: are those that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. For the purposes of these Regulations, “upper part” is defined as 6 inches for Somewhat Poorly Drained Soils. Poorly and Very Poorly Drained Soils are presumed to be Hydric, unless they have been artificially drained or otherwise altered. In such special cases, the “upper part” shall be defined as within 12 inches of the soil surface. Oxidized rhizospheres and mottling within the “upper part” of the soil as defined above shall be considered as evidence of anaerobic conditions, and the soil shall be considered hydric. Also for the purpose of these Regulations, Wetland plant communities, which are dominated by plants, rated as FACW or FACW⁺ by the Fish and Wildlife Service in the document entitled “National List of Plant Species That Occur in Wetlands: Massachusetts 1988” and which contain Obligate Wetland plants species, shall be presumed to be underlain by Hydric soils.

Isolated Wetland: means an area of at least 5,000 sq. ft where groundwater, flowing or standing surface water, or ice supports a community composed of at least 50% Wetland plant species as included or identified in generally accepted scientific technical publications.

NOI: Notice of Intent means the written Application for Permit filed by any person (see definition below), intending to remove, fill, dredge, or alter any Area Subject to

Protection under the Massachusetts Wetlands protection Act (M.G.L. Ch. 131, Sec. 40) or the bylaw.

Ongoing Conditions: Special conditions set forth in a written Permit issued by the Commission for the purpose of permitting, regulating, or prohibiting any activity that removes, fills, dredges, builds upon, or alters any Resource Area and or Buffer Zone. These perpetual conditions must remain with the title/deed of the property and are include in the Certificate of Compliance for said property.

OOC: Order of Conditions, means the written document issued by the Commission containing conditions which regulate or prohibit an activity in a Resource Area Subject to Protection under the Wetlands Protection Act or the bylaw.

Open Space: any undeveloped area of land.

ORW: Outstanding Resource Water. Waters designated as Class A public water supplies and Vernal Pools certified by the Natural Heritage Endangered Species program.

Person: includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

Pond: follows the definition of 310 CMR 10.04

Practicable Alternative: a measure that is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. The scope of alternatives under consideration shall be commensurate with the type and size of the project. Alternatives may be based on cost, existing technology, proposed use and logistics in light of the overall project purpose.

Rare Species: includes, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless whether the site in which they occur has been previously identified by the Division.

RDA: Request for Determination of Applicability means a written request made by any person to the Commission for a determination as to whether an area or activity is subject to the bylaw.

Riverfront Area: as defined in 310 CMR 10:58(2). Because the State has established a 200 ft. setback on each side of a perennial stream, river or brook, the Commission

recognizes the need to protect this area. For the purpose of administrating these regulations, the Commission has adopted the States definition of the Riverfront Area.

Vegetated Buffer Strip: a continuous buffer strip, undisturbed and in its natural state, between development activities in the Buffer Zone and the Resource Area to be protected.

Vernal Pool:

A. As an essential breeding site for certain wildlife and in addition to scientific definitions found in the regulations under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00), “vernal pool” shall be defined as:

1. a confined, isolated basin depression in upland, or in low pockets within Wetland communities which holds water in most years for two consecutive months during the Spring and Summer, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife
2. that which tends not support established breeding fish populations and has no permanent flowing outlet, (most of the time)

B. The boundary of the resource area for vernal pools shall be 100’ outward from the mean annual high-water line defining the depression.

Water Dependant Use: those uses and facilities that require direct access to, or location in, inland waters and which therefore, cannot be located away from those waters.

IX. Enforcement

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, 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 bylaw.

The Ware Conservation Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw 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 the Commonwealth.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued there under by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under G.L. Ch. 40 §21D, and civil and criminal court actions. Any person who violates provisions of

this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Upon request of the Commission, the select board and town counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in G.L. Ch. 40 §21D, which has been adopted by the Town in § [] of the general bylaws.

X. Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the 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 bylaw. Failure to provide adequate evidence to the Ware Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

XI. Appeals

A decision of the Ware Conservation Commission shall be reviewable in the superior court in accordance with G.L. Ch. 249 §4.

XII. Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) thereunder. It is the intention of this bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations.

XII. Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or determination which previously has been issued.

A true copy attest: 
Nancy J. Talbot – Town Clerk, Ware, MA

December 10, 2007