

Extracted from Wrentham Conservation Commission Regulations

Section 11.0: 50-Foot No-Work Zone Regulations

11.1: Jurisdictional Authority

Authority to implement additional restrictive regulations within land within 50 feet of a regulated wetland resource area is provided in Section 8 of the WPB as follows:

“The Commission therefore will require that the applicant maintain a fifty-foot wide continuous strip of undisturbed vegetative cover within the 200-foot [or 100-foot] area. A variance to this criteria may be granted under three circumstances: 1)if the applicant demonstrates that the proposed project will have no adverse effect on any of the interests protected by this bylaw; 2)if the project is a rare or unusual case; and 3)if the project is not approved by the Commission this action will restrict the use of the property to such an extent to constitute a constitutional taking without compensation. If no evidence is supplied to support the claims that the project meets the specified criteria above the hearing will be delayed or continued until this information is provided, or the project request will be denied without prejudice.

To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible, to minimize wetlands alteration, and where alteration is unavoidable, to incorporate mitigation measures into the project design.”

These areas are presumed to require additional protections due to their close proximity to sensitive resource areas. However, it is recognized that incursions into the 50-foot no-work zone will occasionally be necessary. These regulations are designed to provide guidance as to how the 50-foot “no-work” zone applies, how the three criteria for exemption in the Bylaw are to be met by an applicant and presented to the Commission, and what forms of mitigation for those exemptions exist.

11.2: Jurisdiction

These regulations apply to any and all construction subject to jurisdiction under the WPB. This policy does not apply to those areas on lots with buildings and landscaping in existence prior to April 1, 1999, except that any undisturbed areas of these lots, that is, areas with natural vegetation, will come under the jurisdiction of these regulations.

These criteria do not apply in those instances where it would be clearly contrary to public safety to not allow the work to be performed in the 50 foot no work zone. “Section 3: Exceptions” in the WPB lists activities that are exempt from strict compliance with this section of the

regulations. See that section for the notifications to the Commission that are required prior to starting any work under the “exceptions” category.

11.3: Purpose

Activities within 50 feet of a wetland have the highest potential for negative impacts upon the wetlands and for future violations of the Wetland Protection Act and Bylaw, and have the greatest impacts on wetland functions. Typical examples of work within 50-feet of a wetland include (but are not limited to) the following activities and alterations, with subsequent wetland degradation resulting:

- Discharge of storm water from management structures deposits water containing pollutants and elevated nutrients within the wetlands, degrading surface and ground water quality.
- Construction of houses and buildings introduces pollutants to the wetlands and causes subtle alterations, especially alteration of soil chemistry, that are additive throughout the watershed.
- Concentrating water flow at stormwater management structures leads to increased flows, decreased times-of-concentration, and greater potential for flooding and downstream impacts to properties.
- Removal of trees alters soil and water chemistry, degrades water quality in wetlands by elevating runoff temperatures, and is deleterious to native plant and animal life. It also increases soil erosion and invites the proliferation of non-native invasive species.
- Clearing and grubbing of understory shrubs, trees, and herbaceous plants alters soil chemistry and unsaturated soil-water chemistry, creating impacts that are harmful to ground water supplies and the environment. Clearing and grubbing also afford the opportunity for non-native and invasive plants to flourish at the expense of wildlife and in some instances, ground water and surface water quality.

These regulations have been enacted to attenuate the above effects of intrusions into the 100 foot buffer and 50 foot no-work zones.

11.4: Definitions

All definitions are as they appear in the Wetlands Protection Act, 310 CMR 10 and DEP policy documents, unless they are more stringently defined in the Wrentham Wetland Protection Bylaw or elsewhere in these regulations.

“fifty-foot wide continuous strip of undisturbed vegetative cover”:

This term is used in the WPB to define the area of additional regulation. The Commission defines this area as extending 50 feet horizontally uphill from the closest wetland resource boundary as defined under both state and local regulations. This phrase is defined as allowing no work within this 50 foot zone unless the criteria set forth herein are met. The term “no work” zone used in these regulations refers to this area.

The installation of drainage pipes, swales, basins and other stormwater management structures within this “no work” zone are included in the examples of activities that are not allowed without a waiver as outlined in Section 11.6.

11.5: Procedure

It is strongly recommended that if work is to be done close to the 50 foot no work zone that an Abbreviated Notice of Resource Area Delineation (ANRAD) be filed prior to the filing a Notice of Intent. Similarly, an ANRAD is recommended if the project is complex or requires permitting from the Planning Board in addition to the Conservation Commission. If work needs to occur within the 50-foot no-work zone the applicant is required to file an application for that work when submitting a Notice of Intent according to the criteria set forth below.

11.6: Meeting the Criteria of the WPB

For any work within 50 feet of a wetland the applicant will need to submit as part of the Notice of Intent application a waiver request for each separate intrusion. The applicant must state how the project meets each of the required criteria. All three criteria must be met and it is the burden of the applicant to provide substantive documentation of each point.

Criterion #1 –The proposed project will have no adverse effect on any of the interests protected by the Bylaw

The submitted plans and reports must clearly show what work is to be done within the 50-foot no-work zone and how it is to be constructed. Detailed information beyond that required in Section 8 may be required, and a construction sequence must be included that shows potential impacts to resource areas both during and after construction. Information submitted must include:

- A. Statement of how work is to occur, and a comprehensive statement of what measures will be taken to protect the wetland, both during and after construction.
- B. Plans showing the work to be performed within the 50 foot no-work zone must include both plan and cross-section details to clearly show pre- and post-development conditions. Existing and proposed surface conditions must be detailed.

C. Plans or other information shall be submitted showing **alternatives** to the proposed design. The Commission shall not allow the work under this criterion if a feasible alternative is available. If the work is allowed, the Commission shall choose the alternative with the least possible impact to wetland resources.

D. All information required in Section 15.2 shall be submitted.

The Commission will make a determination based on the submitted information as to whether adequate environmental protections have been provided, for both temporary and permanent conditions, to allow the project to be constructed and operated with no adverse effect on any of the interests protected by the WPB.

Criterion #2 – The Project is a Rare or Unusual Case

The applicant must demonstrate within the report how their project meets this test. The Wrentham Conservation Commission believes that the following qualify as rare and unusual cases.

- Open space subdivisions submitted under the provisions of Article 17 of the Town Zoning Bylaws may meet this criterion if the Commission determines that the overall benefit created by the permanently protected open space will be more beneficial to the protection of wetland resources than if construction was permitted as a conventional subdivision. This exemption extends to both the construction of the roadways and utilities and the construction of houses within the open space development. However, requests for compliance for the roadway and utilities (including stormwater) should be made separately from requests for compliance of the lots. While it may be determined by the Commission as necessary to construct the roadways and utilities in the “no work” zone to achieve more valuable open space protection, it is the applicants’ responsibility to make every effort to keep lot construction outside of the “no work” zone, and to configure the lots to minimize overall impacts to resource areas. Work on the lots will be approved only if it creates a significantly more effective open space area for the overall protection of wetland resources, or if a denial of the request will significantly reduce the number of lots that would be allowed if the site was constructed in a conventional layout. For all instances, the Commission’s standard should be whether the overall protection of wetland resources is enhanced by the granting of a waiver. Criterion #3 need not be met if approval under this case is obtained.
- Permanently protecting at least 30% of a property being built on or sub-divided, of which at least 50% of the total protected area must be upland and is preserved through a Conservation Restriction approved by the State or by donation through a recognized Land Trust or other body that will certify that said property will be preserved in perpetuity.
- Restricting all wetlands and at least 15% of total upland in the project from ever being

developed or altered. The protected land may be managed to maintain existing vegetation or to combat invasive species that pose ecological harm.

- A service to the community at large providing greatly increased public safety as a non-incidental use.
- The intrusion is in exchange for leaving a significant natural feature on, or very close to, the site protected in perpetuity. Significant natural features include landforms, significant and/or historic trees, significant stone walls or rural landscapes.

In the case of wetland crossings where alteration is unavoidable, the applicant must demonstrate that no other access, whether under the control of the present or any previous owner of the property, has existed or currently exists. It is important that the applicant consider all alternative means of accessing a site and convey that research in the text of the report.

The applicant may apply for relief in any other case where justified. However, any new category should be fully documented and exhaustively researched with respect to potential alterations and appropriate mitigation. It is important that the applicant documents in narrative form the reasoning as to why the project meets this criterion. Any outside sources should be referenced within the report.

Criterion #3 – If the project is not approved by the Commission this action will restrict the use of the property to such an extent as to constitute a constitutional taking without compensation.

The applicant will need to demonstrate that reasonable economic use of the property would be denied such that it would result in an unconstitutional taking if the 50-foot no-work zone is maintained. The taking must be whole, that is, that it leaves no “reasonable use” of the property available to the owner that would have been available had the regulations not been in effect. “Reasonable use” means the smallest practical use that is an allowable activity on the parcel of land, such as the construction of a 2-bedroom house with septic system on a zoning compliant lot. In a subdivision, house lot lines must be drawn to provide adequate area for construction of a home and its grading and septic system while avoiding any work in the 50-foot no-work zone.

If an applicant believes that the 50-foot no-work zone renders his lot unusable, he must demonstrate this by submitting engineering plans that show the largest possible house on the site, with all elements complying with the 50-foot no-work zone, with a septic system which includes the possibility of combining that system with other nearby systems or of using alternative sewage treatment systems. Another necessary consideration includes adjustments to the property lines of other adjoining lots as may be necessary.

Note that lots created in conventional subdivision developments are not eligible for an exemption under this criterion. Lots within these subdivisions should be designed so that construction occurs outside of the 50 foot no work zone. The inability of an applicant to maximize the number of lots in a development that may be allowed under zoning does not constitute a taking as defined by these regulations.

11.7: Documentation of Decision

Once the Commission has evaluated the applicant's report it will determine by **super majority** vote whether to grant the request as submitted. The Commission may make this vote prior to the close of the public hearing **if** the Commission votes to allow it, and **if** the applicant wishes to do so, and the application may be modified to address concerns raised during the review of the three criteria, and then reconsidered **if** a vote under this section is still required. If a denial is issued, and modifications are not made, then the Commission shall provide documentation for the decision.

11.8: Mitigation

Mitigation to compensate for the potential damage to the resource areas and the 50 foot no work zone shall be required as outlined in Section 15.3 of these regulations.