

## **Chapter 294**

### **WETLANDS PROTECTION**

#### **GENERAL REFERENCES**

**Wetlands Protection Regulations – See Ch. 505.**

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#### **§ 294-1. Purpose.**

- A. The purpose of this bylaw is to further protect and preserve the shores, ponds, rivers and wetlands and adjoining land areas in the Town of Marshfield by controlling activities deemed to have a significant impact upon wetland values. The interests protected by this bylaw include but are not limited to the following: public water supply, private water supply, groundwater, flood control, erosion control, sedimentation control, recreation, public safety, aquaculture, agriculture, fish, shellfish, wildlife (and related habitats of wildlife, fish and shellfish), and prevention of storm damage and water pollution.
- B. This bylaw seeks to protect wetlands values by furthering the legislative purpose embodied in the Wetlands Protection Act through more stringent controls than those promulgated by the Department of Environmental Protection under MGL c. 131, § 40. **[Amended 4-24-2017 ATM by Art. 10]**

#### **§ 294-2. Jurisdiction. [Amended 4-23-2018 ATM by Art. 24]**

No person shall remove, fill, dredge or alter any bank, freshwater wetland, coastal wetland, beach, dune, flat, marsh, meadow, bog, swamp, or lands adjoining the ocean or any estuary, creek, river, stream, pond or lake, or any land under said waters or any land subject to tidal action, coastal storm flowage, or flooding, or land within a distance of 100 feet from any of the aforesaid resource areas (buffer zone), and land within 200 feet of a river, without filing written notice of his intention so to remove, fill, dredge or alter and without receiving and complying with an order of conditions. Said resource areas shall be protected whether or not they border surface waters.

#### **§ 294-3. Procedure.**

- A. A notice of intent (hereinafter referred to as notice) shall be sent by certified mail or delivered in hand to the Marshfield Conservation Commission (hereinafter referred to as the Commission), including such plans as may be necessary to describe such proposed activity, the ultimate use of the land and its effect on the environment. The Commission may require data, information and plans under this bylaw

in addition to the information required of a notice of intent filed pursuant to the Wetlands Protection Act, MGL c. 131, § 40.

- B. At the time of filing the notice, the applicant shall pay a filing fee specified in regulations of the Commission. In addition, the applicant shall agree in writing to pay the costs and expense of any expert consultant deemed necessary by the Commission to review the applications.
- C. The Commission shall conduct a public hearing on any notice, with written notification of the hearing given at the expense of the applicant five working days prior to the hearing, in a newspaper of general circulation in the Town of Marshfield. A copy of the written notification of the hearing shall be mailed by certified mail at the expense of the applicant seven days prior to the hearing to all abutters according to the then current Assessors' records. A list of abutters shall be submitted with the aforementioned notice.
- D. The Commission shall commence the public hearing on any notice within 21 days from receipt of a complete notice and verification of the list of abutters by the Board of Assessors.
- E. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, MGL c. 131, § 40. **[Amended 4-24-2017 ATM by Art. 10]**
- F. For reasons announced by the Commission at the hearing, the Commission shall have authority to continue or postpone the hearing to a date certain announced at the hearing, either for receipt of additional information offered by the applicant or others, or for information required of the applicant, deemed necessary by the Commission in its discretion.
- G. The Commission shall issue its decision in writing within 21 days of the close of the public hearing thereon.
- H. The Commission is empowered to deny permission for any removal, dredging, filling, or altering of subject lands within the Town if, in its judgment, such denial is necessary to preserve the health, welfare, and safety of individuals or the community or protect subject lands in accordance with the purposes of this bylaw. Due consideration shall be given to possible effects of the proposal on all values to be protected under this bylaw and to any demonstrated hardship on the petitioner by reason of a denial, as brought forth at the public hearing.
- I. The Commission, its agent, officers and employees, may enter upon the land upon which the proposed work is to be done or for the purpose of carrying out its duties under this bylaw and may make or cause to be made such examination or survey as deemed necessary.
- J. The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the

application will not have significant or cumulative adverse effects upon the wetland values protected by this bylaw, as determined by the Conservation Commission. Failure to provide evidence to the Commission to support this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions. **[Amended 4-23-2018 ATM by Art. 25]**

#### **§ 294-4. Definitions and regulations.**

- A. The term "person," as used in this bylaw, shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof, administrative agency, public or quasi-public corporation or body, or any other legal entity or its legal representative, agents or assigns.
- B. Definitions shall be set forth in regulations promulgated pursuant to this bylaw. If regulations are not promulgated or definitions are not set forth in said regulations, then the definitions set forth in MGL c. 131, § 40, and the regulations promulgated thereunder shall be incorporated as part of this bylaw for the sole purpose of providing definitions not otherwise provided by the regulations promulgated under this bylaw.
- C. After due notice and public hearing, the Commission may promulgate rules and regulations to further effectuate the purposes of this bylaw. 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.<sup>1</sup>

#### **§ 294-5. Violations and penalties.**

- A. Any person who violates any provision of this bylaw or any condition of a permit issued pursuant to it shall be punished by a fine of \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense; if more than one, each condition violated shall constitute a separate offense. This bylaw may be enforced pursuant to MGL c. 40, § 21D, by a Town police officer or other officer having police powers. **[Amended 4-24-2017 ATM by Art. 10]**
- B. Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this bylaw or in violation of any permit issued pursuant to this bylaw shall be subject to this bylaw and shall forthwith comply with any order to restore said land to its condition prior to such violation.

#### **§ 294-6. Emergency projects.**

The notice required by § 294-2 of this bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the citizens

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1. Editor's Note: See Ch. 505, Wetlands Protection Regulations.

of Marshfield and to be performed or ordered to be performed by an administrative agency of the commonwealth or by the Town. Emergency projects shall mean any projects certified to be an emergency by the Conservation Commission if only this bylaw is applicable. In no case shall any removal, filling, dredging or alteration authorized by such certification extend beyond the time necessary to abate the emergency.

**§ 294-7. Severability.**

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision hereof.