

Chapter 423

WETLANDS PROTECTION

GENERAL REFERENCES

Drainage — See Ch. 248.

Stormwater management — See Ch. 381.

Excavations — See Ch. 259.

Conservation Commission rules and regulations — See Ch. 515.

Underground storage tanks — See Ch. 377.

Subdivision regulations — See Ch. 550, Art. V.

§ 423-1. Purpose.

- A. This chapter is intended to:
- (1) Provide guidelines on the protection of wetlands, water resources, lands subject to flooding, and adjoining upland areas.
 - (2) Utilize the home rule authority of the Town of Greenfield for the protection of wetland resource areas by prior public review.
 - (3) Control activities likely to have a significant or cumulative effect upon jurisdictional areas as outlined in the Massachusetts Wetlands Protection Act, MGL c. 131 § 40, and 310 CMR 10.00.
- B. This chapter also provides additional local enforcement measures in conjunction with the Massachusetts Wetlands Protection Act. It is also the intention of this chapter, unless otherwise stated, that the jurisdiction, authority, exceptions, exemption, time periods, application procedures, definitions and enforcement standards of the Wetlands Protection Act shall apply.

§ 423-2. Jurisdiction.

- A. Except as permitted by the Conservation Commission (hereafter referred to as "the Commission"), no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, springs, banks, reservoirs, lakes, ponds, beaches, and lands under water bodies; lands adjoining these resource areas out to a distance of 100 feet, known as the "buffer zone"; rivers, streams, brooks and creeks, whether perennial or intermittent; lands adjoining these resource areas out to a distance of 200 feet, known as the "riverfront area"; or lands subject to flooding or inundation by groundwater or surface water (collectively the "resource areas protected by this chapter"). Said resource areas shall be protected whether or not they border surface waters.

- B. Jurisdiction under this chapter shall be the same as in the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, except as outlined below.
- C. In accordance with the Massachusetts Wetlands Protection Act and based upon local historical experience, the Commission has determined that the following provisions are necessary to address and clarify issues particular to Greenfield and to protect the interests contained in the Massachusetts Wetlands Protection Act, MGL c. 131, § 40. Each provision is followed by a brief explanation in italics of the intended purpose, which is not binding.
- (1) For activities within the jurisdiction, a minimum of a twenty-five-foot "No Disturb Zone" shall be maintained or provided between resource areas and all altered areas. The Commission shall create a wider "No Disturb Zone" when deemed necessary to protect the resource area because of the environmental quality or the hydrology of the resource area. The following are not subject to a "No Disturb Zone":
 - (a) Utility rights-of-way;
 - (b) Emergency activities;
 - (c) Any work with limited project status; and
 - (d) Activities currently exempted from the requirements for the riverfront area under 310 CMR 10.58(6).

This provision serves to ensure protection from negative impacts during activities within a resource area and the long-term viability of a resource area.

- (2) The following activities are prohibited within the one-hundred-year floodplain if implemented after August 7, 1996:
 - (a) The outdoor storage of autos, auto parts and associated materials, and lawn equipment, including but not limited to lawn mowers, weed whackers, snow blowers, etc.
 - (b) Solid waste landfills, junkyards, salvage yards, dumps.
 - (c) The manufacture, storage, or disposal of hazardous, toxic, or radioactive wastes.
 - (d) The temporary or permanent storage or disposal of materials used in snow and ice control, including sand, salt or other deicing chemicals.
 - (e) The outdoor storage or placement of storage tanks, above or below ground, for petroleum products or other hazardous material.

- (f) The storage, dumping, filling, or disposal of earth, yard waste, or other materials.

These restrictions serve to protect areas within the floodplain from potential sources of contamination from pollutants. Vehicles and their accessories (road salt, sand, oil, gas) stored in the floodplain will pollute surface water during flooding events, as well as themselves becoming dangerous debris.

- (3) One-hundred-percent compensatory storage shall be provided for all flood storage volume that will be lost as the result of a proposed project within the one-hundred-year floodplain.

This provision clarifies that the Commission considers all incremental reductions in flood storage capacity to be significant over time, and therefore requires replacement at a 1:1 ratio.

- (4) Wetlands crossings to provide access to otherwise unreachable upland areas may be allowed only if:

(a) The only buildable uplands available on the lot have no reasonable alternative means of access from any road, whether publicly or privately owned.

(b) The crossing is designed to minimize to the greatest extent possible any disruption of the wetland.

(c) The driveway length and design are the minimum length and width necessary to provide access to the proposed use.

This provision clarifies the criteria for determining the appropriateness of proposed wetlands crossing. The Commission may request the applicant to utilize access over an adjacent parcel of land currently or formerly owned by the applicant, or in which the applicant has, or can obtain, an ownership interest; may impose conditions to protect the wetlands; or the Commission may deny a permit for a wetland crossing if the above criteria have not been satisfactorily met.

- (5) To prevent resource area loss, the Commission shall require applicants to avoid or minimize alteration wherever feasible; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may 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 that assures success. Replication shall only be allowed when a preponderance of the evidence demonstrates to the satisfaction of the Commission that the hydrological and ecological value of the replicated wetland would be greater than that of the wetland to be replaced. Estimation of wetland value and guidelines for replication shall be based upon the guidelines for wetland replication as described in

the 2002 Massachusetts Inland Wetland Replication Guidelines; Commonwealth of Massachusetts Guidance No. BRP/DWM/WetG02-2.

The purpose of this provision is to provide clarification that the destruction of wetlands shall only be considered as a last resort. Because replication does not in fact substitute for many wetlands values, proposed wetlands replications are at the discretion of the Commission based upon solid scientific reasoning and shall not be permitted simply based upon a proposed 1:1 replication ratio or the "highest and best use" of a property based upon development potential.

§ 423-3. Exemptions and exceptions.

- A. The applications and permits required by this chapter shall not be required for work performed for normal maintenance or improvement of land in agricultural and aquacultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.
- B. The permit and applications required by this chapter shall apply to the harvesting of forestry products under the provisions of MGL c. 132, §§ 40 through 46 when an approved forest cutting plan has been properly filed with the Commission.
- C. The applications and permits required by this chapter 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, wastewater, stormwater, telecommunication services, or public transportation (roads, bridges), provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.
- D. Except as otherwise provided in this chapter or regulations of the Commission, the definitions of terms, exemptions, limited projects, performance standards, time frames, and requirements shall be as set forth in the Wetlands Protection Act, MGL c. 131, § 40, and in 310 CMR 10.00 ("the state regulations"), as may be amended from time to time.
- E. The applications and permits required by this chapter 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 commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; 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 this chapter. 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. No work on any emergency project shall be conducted after the expiration of 30 days from the initial certification of the project as an emergency project.

§ 423-4. Application and fees; consultants.

- A. Written application shall be filed with the Commission to perform activities 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.
- B. The Commission may accept as the application and plans under this chapter any application and plans filed under the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00), but the Commission is not obliged to do so.
- C. Any person desiring to know whether a proposed activity or an area is subject to this chapter 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.
- D. Procedures under this chapter are the same as the Massachusetts Wetlands Protection Act, MGL c. 131, § 40, in terms of procedures and forms, with the following exception:
 - (1) The applicant shall submit seven copies of each application. The applicant must submit a complete application and all supplemental materials by 12:00 noon at least seven business days prior to the Commission meeting date. Please note, Town-observed holidays might change this timeframe.
- E. Upon receipt of a request for determination of applicability (RDA), notice of intent (NOI), abbreviated notice of intent (ANOI), or abbreviated notice of resource area delineation (ANRAD) application, or at any time during the hearing process, the Commission is authorized to require an applicant to pay a fee for the costs and expenses borne by the Commission for securing specific outside consultants, including engineers, wetlands scientists, land surveyors, wildlife biologists or other experts deemed necessary by the Commission to come to a final decision on the application. This fee is

called the "consultant fee." The specific consultant services may include, but are not limited to, performing or verifying the accuracy of a resource survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis; and researching environmental or land use law.

- F. Such funds shall be deposited with the Town Treasurer, who shall create an account specifically for this purpose. Additional consultant fees shall be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services. Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole discretion of the Commission.
- G. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to be given on the date it is mailed or delivered. The applicant may withdraw the application or request within five business days of the date notice is given without incurring any costs or expenses. The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within 10 business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing. An applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.

§ 423-5. Notice and hearings.

- A. An application for any wetland permit (NOI, RDA, ANOI, or ANRAD) shall be filed with the Commission, Greenfield Department of Planning and Development by mail, electronic, or hand delivery. The applicant shall give written notice to the property owner if other than the applicant.
- B. When submitting any wetland permit, other than a request for determination of applicability, the applicant shall notify by certified mail all abutters and owners of property within 300 feet of the property lines, as determined by the most recent Assessor's maps, of the nature and intent of the proposed project and dates of applicable public hearings, if known. The notice to abutters shall also state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice to abutters, shall be filed with the Commission.

- C. The Commission shall conduct a public meeting on any RDA application. The Commission shall conduct a public hearing on any other wetland permit application (NOI, ANOI, or ANRAD). Notice of said hearing shall be published in a local newspaper of general circulation at least five working days prior to said hearing at the expense of the applicant. The published notice, which shall be prepared by the Commission, shall contain the following information: the date, time, and place of hearing; the location of the property affected; the name of the applicant; and the action requested from the Commission. The Commission shall have authority to continue the hearing, with the applicant's approval, 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 others as deemed necessary by the Commission.
- D. The Commission shall issue its wetland 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 shall send the wetland permit, other order or determination to the property owner as well as the applicant, if different. In an appropriate case, the Commission may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00). Applicants may contact the Conservation Agent or refer to the Greenfield Conservation Commission Rules and Regulations for more information on meeting structure.¹

§ 423-6. Coordination with other boards.

An applicant must provide, at his/her own expense, seven copies of the application and associated materials to the Commission. One copy is distributed to each Commissioner; two copies are on file at the Department of Planning and Development for review by other boards/departments (Zoning Board of Appeals, Agricultural Commission, Building Department, Health Department, Planning Board, and the Assessor's office). Once finalized materials are received, the Conservation Agent shall notify relevant boards/departments that materials are available for review. Comments from other boards and departments should be submitted to the Conservation Agent prior to the scheduled public meeting.

§ 423-7. Issuance or denial of permit; conditions; waivers; alteration and replication; performance of work; wetlands delineation.

- A. Permits. If the 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

1. Editor's Note: See Ch. 515, Art. I, Conservation Commission Rules and Regulations.

this chapter, 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.

- B. Conditions. 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.
- C. Denials.
 - (1) Where no conditions are adequate to protect resource areas, the Commission may deny a permit for failure to meet the requirements of this chapter. It may also deny a permit for:
 - (a) Failure to submit necessary information and plans requested by the Commission.
 - (b) Failure to comply with the procedures, design specifications, performance standards, and other requirements of the Commission.
 - (c) Failure to avoid, minimize, or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this chapter.
 - (d) Failure to correct any outstanding violations within the Town of Greenfield under this chapter or the Massachusetts Wetlands Protection Act, MGL c. 131, § 40.
 - (2) Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.
- D. Waiver. 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; and that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

- E. Buffer zone. 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 chapter.
- F. Riverfront area.
- (1) 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. No permit issued hereunder shall permit any activities within the riverfront unless the applicant, in addition to meeting the otherwise applicable requirements of this chapter, has proved by a preponderance of the evidence that:
 - (a) There is no practicable alternative to the proposed project with fewer adverse effects; and
 - (b) Such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this chapter.
 - (2) The Commission shall regard an alternative as practicable that 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.
- G. Alteration and replication. 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 that assures success. Replication shall only be allowed when a preponderance of the evidence demonstrates to the satisfaction of the Commission that the hydrological and ecological value of the replicated

wetland would be greater than that of the wetland to be replaced. Estimation of wetland value and guidelines for replication shall be based upon the guidelines for wetland replication as described in the 2002 Massachusetts Inland Wetland Replication Guidelines; Commonwealth of Massachusetts Guidance No. BRP/DWM/WetG02-2.

- H. Special studies. The Commission may require a special study (i.e., wildlife habitat, geomorphic, hydrologic, stormwater studies) 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 area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, actual or possible presence of rare plant or animal species in the area, physical properties of the site, or proximity of the site to nearby resource areas of particular importance. Special studies shall be performed by an individual who at least meets the qualifications set out in the Wetlands Protection Act regulations (310 CMR 10.60).
- I. Special resource areas. The Commission may assign special resource area status to sites that perform unique resource functions and condition protections for those special resource areas. These areas may include (but are not limited to) rare species habitat, wildlife migration corridors, areas sensitive to runoff, flooding, erosion, desiccation, and vernal pools. The Commission shall presume that all areas meeting the definition of "vernal pools" under § 423-9, Definitions, of this chapter, including the adjacent area, perform essential habitat functions, and warrant protection. Assignment of special resource areas may be supported or refuted only by credible evidence which, in the judgment of the Commission, demonstrates that the area does or does not provide essential or special resource functions. Any formal special resource area evaluation should be performed by an individual who at least meets the qualifications under the Wetlands Protection Act regulations.
- J. Term of applicability, renewals, revocations, and amendments.
 - (1) 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.

- (2) For good cause, the Commission may revoke any permit, DOA, or ORAD or any other order, determination or other decision issued under this chapter after notice to the holder, the public, abutters, and Town boards, pursuant to §§ 423-5 and 423-6, and after a public hearing.
 - (3) Amendments to permits shall be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.
 - (4) The Commission in an appropriate case may combine the decision issued under this chapter with the permit, DOA, ORAD, or certificate of compliance (COC) issued under the Wetlands Protection Act and regulations.
- K. Initiation of work. 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 may record the documents itself and require the applicant to furnish the recording fee therefor, either at the time of recording or as a condition precedent to the issuance of a COC.
- L. Wetland delineations. All delineations of wetland boundaries that come before the Commission for approval shall include the submission of the MassDEP Bordering Vegetated Wetland (310 CMR 10.55) Delineation Field Data Form used to determine these boundaries.

§ 423-8. Regulations.

Rules and regulations, and any changes or modifications, shall be adopted and take effect only following public notice and public hearing, a vote by the Commission, approval by Town Council, and the filing with the Town Clerk. Rules and regulations are established to carry out the purpose of this chapter, to explain the conduct and procedures of the Commission, and to provide guidance to applicants seeking to conduct a regulated activity. 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 chapter. At a minimum, these regulations shall reiterate the terms defined in this chapter, define additional terms not consistent with the chapter, and impose filing and consultant fees.

§ 423-9. Definitions.

- A. Except as otherwise provided in this chapter or in associated regulations of the Conservation Commission, the definitions of terms and the procedures in this chapter shall be as set forth in the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00).

- B. The following definitions shall apply in the interpretation and implementation of this chapter:

AGRICULTURE — Refers to the definition as provided by 310 CMR 10.04 (Agriculture).

ALTER — Includes, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this chapter:

- (1) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind.
- (2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood 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) Driving of piles, erection, expansion or repair of buildings, or structures of any kind.
- (7) Placing of obstructions or objects in water.
- (8) Destruction of plant life, including cutting or trimming of trees and shrubs.
- (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.
- (11) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this chapter.

BANK — Includes 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.

CUMULATIVE EFFECT — Includes any impact on the resource area environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.

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 ordinances, administrative agency, public or quasi-public

corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

POND — Shall follow the definition of 310 CMR 10.04.

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 of whether the site in which they occur has been previously identified by the Division.

VERNAL POOL — Includes, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be the mean annual high-water line defining the depression.

§ 423-10. Security.

As part of a permit issued under this chapter, in addition to any security required by any other municipal or state board or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

- A. Surety: by bond, deposit of money, or other undertaking of financial responsibility sufficient, in the opinion of the Commission, payable to the Town of Greenfield, to be released in whole or in part upon the issuance of a certificate of compliance for work performed pursuant to the permit; or
- B. Restriction: by 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 municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage. This method shall be used only with the consent of the applicant.

§ 423-11. Enforcement; violations and penalties.

- A. Activities which remove, fill, dredge, build upon 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 enforcement order issued pursuant to this chapter shall constitute a violation.

- B. The Commission shall have authority to enforce this chapter, its regulations, and permits issued thereunder by violation notices, noncriminal citations under MGL c. 40, § 21D, and civil and criminal court actions. Any person who violates provisions of this chapter 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.
- C. When a violation is believed to have occurred, the following procedures for violations shall be followed by the Conservation Agent or member(s) of the Commission:
- (1) Contact the property owner to:
 - (a) Request oral permission from the property owner to conduct a site visit; or
 - (b) If the property owner cannot be contacted or refuses entry onto the property, verify violation from a public way or a cooperative neighboring property; or
 - (c) Obtain the necessary court order to allow entry onto the property and send a certified letter to the property owner's mailing address according to the most recent Tax Assessor information, notifying the property owner of a scheduled site visit.
 - (2) Conduct a site visit. Determine if a violation has occurred and the extent of the violation through examination, survey, or sampling as determined by the Commission.
 - (3) Based upon the severity of the violation, issue a cease-and-desist order and require any of the following remedies:
 - (a) Stoppage of work and implementation of soil erosion control measures if necessary.
 - (b) Owner to attend a scheduled Commission meeting to present a "mitigation plan."
 - (c) Filing of a request for determination of applicability.
 - (d) Filing of a notice of intent.
- D. If the property owner does not comply with the cease-and-desist order or order of conditions in a timely manner, the Commission shall issue an enforcement order as per 310 CMR 10.08.
- E. If the property owner fails to comply with the enforcement order by the specified date, a fine of \$500 per day shall be levied at the discretion of the Conservation Commission under the Noncriminal Disposition Act. The property owner shall be notified of the fine by certified mail or

served by the enforcing person(s), which shall be the Conservation Commission, any of its designees or any police officer.²

- F. Upon request of the Commission, the Town 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.
- G. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- H. Any person who violates any provision of this chapter, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than \$300 per day. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the chapter, regulations, permits, or administrative orders violated shall constitute a separate offense.
- I. As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the noncriminal disposition procedure set forth in MGL c. 40, § 21D, which has been adopted by the Town in Chapter 1, Article III, §§ 1-16 and 1-17, of the Town Code.

§ 423-12. Burden of proof.

The applicant requesting a permit under this chapter shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have a significant or cumulative effect upon the jurisdictional resource areas 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.

§ 423-13. Appeals.

A decision of the Commission shall be reviewable in the Superior Court in accordance with MGL c. 249, § 4.

§ 423-14. Relation to Wetlands Protection Act; expanded jurisdiction.

- A. This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (MGL c. 131, § 40) and regulations thereunder (310 CMR 10.00). It is the intention of this chapter that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted

2. **Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).**

and administered as stricter than those under the Wetlands Protection Act and regulations.

- B. This chapter establishes expanded jurisdiction over all resource areas, beyond the Act. The standards applied, however, are not intended to be identical for all resource areas, as they differ. For instance, it is expected that the Commission's regulations and decisions will be stricter for wetlands and vernal pools than they will be for floodplains. It is expected that the test of avoid-minimize-mitigate set forth in the chapter will be applied to activities within all resource areas, but that the stricter two-part "no practicable alternative" and "no significant adverse impact" test set forth in the chapter will be applied within the riverfront area. The Commission will develop and apply its own standards within the buffer zone, especially to protect its buffering function.