

## TOWN OF WINTHROP

### Chapter 12.40 WETLANDS PROTECTION

#### Sections:

12.40.010 Purpose.

12.40.020 Definitions.

12.40.030 Relation to the Wetlands Protection Act.

12.40.040 Jurisdiction.

12.40.050 Application for permits--Requests for determination.

12.40.060 Emergency situations.

12.40.070 Notices and hearings.

12.40.080 Permit--Issuance or denial.

12.40.090 Burden of proof.

12.40.100 Additional regulations--Authority of commission.

12.40.110 Security.

12.40.120 Enforcement.

12.40.130 Violation--Penalty.

12.40.140 Severability--Permits or determinations not invalidated.

12.40.150 Miscellaneous fees for the conservation commission.

#### 12.40.010 Purpose.

The purpose of this chapter is to protect the wetland, related water resources and adjoining land areas in the town by prior review and control of activities deemed by the wetlands conservation commission likely to have a significant or cumulatively adverse effect upon wetland values, including but not limited to the following (collectively the wetland values protected by this chapter):

- A. Public or private water supply;
- B. Groundwater or surface water;
- C. Flood control;
- D. Erosion or sedimentation control;
- E. Storm damage prevention;
- F. Water quality;
- G. Water pollution prevention;
- H. Fisheries;
- I. Land containing shellfish;
- J. Wildlife habitat;
- K. Recreation; and
- L. Aquaculture values.

(Prior code § 138-1)

#### 12.40.020 Definitions.

The following definitions shall apply in the interpretation and implementation of this chapter. Except as otherwise provided in this chapter or regulations which may be promulgated thereunder, definitions appearing in MGL c. 131 § 40 and in 310 C.M.R. 10 shall govern.

"Alter" means and includes but is not limited to 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 characteristic, 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;
5. Placing of fill or removal of material;
6. Driving of piles, erection or repair of buildings or structures of any kind;
7. Placing of obstructions in water or other dam-like structures in water;
8. Destruction of wetland vegetation;
9. Any activities, changes or work, which may cause or tend to contribute to pollution of any body of water or groundwater.

"Coastal bank" means the first significant break in slope beyond the one hundred (100) year storm elevation on a seaward face or elevated landform, other than a coastal dune, which lies at the landward edge of a coastal beach, land subject to tidal action or other coastal wetlands.

"Cumulative effects" means activities regulated under this chapter which may be individually minor, but when considered in relation to other past, present or future activities in a given area may be significant in the aggregate.

"Flood control" means the ability of wetlands to absorb, store and slowly release floodwaters to minimize peak flood levels. Flooding can be caused by precipitation or a rising water table. Activities in or within one hundred (100) feet of resource areas shall not alter the flood control value of wetlands significantly.

"Person" means any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof, subject to town bylaws, administrative agency, public or quasi-public corporation or body, the town and any other legal entity, its legal representatives, agent or assigns.

"Storm damage prevention" means the ability of wetland soils, vegetation and physiography to prevent damage caused by water from storms, including but not limited to: erosion and sedimentation; damage to vegetation, property or buildings; or damage caused by flooding, waterborne debris or waterborne ice. Activities in or within one hundred (100) feet of a resource area shall not have a significant effect on storm damage prevention.

"Vegetated wetland" means any area of at least two hundred (200) square feet where surface or ground water or ice, at or near the surface of the ground, support a plant community dominated (at least fifty (50) percent) by wetland species.

"Wetlands replication" means the creation of a wetlands surface water body or other resource area to compensate for the filling or other loss or displacement of all or part of an existing wetlands surface water body or other resource area.

"Wildlife habitat" means resource areas that provide breeding and nesting habitats, shelter, food and water to all plant and animal species dependent on wetlands for any portion of their life cycles. Includes resource areas identified as containing rare, threatened or endangered species as listed by the Massachusetts Natural Heritage

Program. Structures and activities in or within one hundred (100) feet of any resource area shall not have a significant effect on wildlife habitat.  
(Prior code § 138-3)

#### 12.40.030 Relation to the Wetlands Protection Act.

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, except where specifically included in this chapter.  
(Prior code § 138-13)

#### 12.40.040 Jurisdiction.

Except as permitted by the conservation commission or as provided in this chapter, no person shall remove soil or vegetation from, fill, dredge, build upon, discharge into or alter the following resource areas:

- A. Coastal wetlands;
- B. Freshwater wetlands;
- C. Bank, beach, dune, marsh or flat bordering a water body; or land within one hundred (100) feet of these resource areas; or land under a water body; or land subject to flooding, tidal action or coastal storm flowage or vernal pools within a wetland; or land within one hundred (100) feet of the marsh area of critical environmental concern.

(Prior code § 138-2)

#### 12.40.050 Application for permits--Requests for determination.

A. Written applications shall be filed with the commission to perform activities governed by this chapter affecting resource areas protected by this chapter. This application shall include such information and plans as are deemed necessary by the commission to describe proposed activities and their effects on wetlands, recreation areas and their values. No activities shall commence without receiving a permit issued pursuant to this chapter. The commission may, at its discretion, accept as the application and plans under this chapter the notice of intent and plans filed under the Wetlands Protection Act. At the time of an application or request, the applicant shall pay a filing fee as provided in the regulations of the commonwealth.

B. Any person desiring to know whether or not a proposed activity or any area is subject to this chapter may, in writing, request a determination from the commission. Such a request for determination shall contain data and plans specified by regulations of the commission. At the time of an application or request, the applicant shall pay a filing fee of twenty-five dollars (\$25.00).

(Prior code § 138-4)

#### 12.40.060 Emergency situations.

The permit and application required by this chapter shall not apply to emergency projects necessary for the protection of wetlands values or 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. For this work, advance notice, oral or written, must be given to the commission prior to or within twenty-four

(24) hours after the commencement of work. The commission or its agent must certify the work to be an emergency project. The work must be performed only for the time and place certified by the commission for the limited purposes necessary to abate the emergency, but in no instance shall the emergency period exceed twenty (20) days. All emergency work must conform to the performance standards, design specification, policy guidelines and other regulations adopted by the commission. Within twenty-one (21) days of the commencement of an emergency project, a permit application shall be filed with the commission for review as provided in 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.

(Prior code § 138-5)

#### 12.40.070 Notices and hearings.

A. The commission shall conduct a public hearing on any application or request for determination. At the expense of the applicant, the commission shall cause written notice of the hearing to be published at least five working days prior to the public hearing in a paper of general circulation in the town. The commission shall commence the public hearing within twenty-one (21) days from the receipt of a completed notice of intent or request for determination. The commission or its agents shall determine, for scheduling purposes only and in accordance with the submission regulations of the commission, that the application or request is complete. The twenty-one (21) day deadline for a hearing may be extended by the commission or its agents only with the assent of the applicant. The commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant deemed necessary by the commission in its discretion or comments and recommendations of boards and officials. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed, and the commission shall take action on such information as is available.

B. Upon closure of public hearings, there shall be a ten (10) day comment period during which time the wetlands conservation commission shall accept supplementary relevant material. The commission shall issue its decision on the notice of intent, in writing, within twenty-one (21) days of the close of the public hearing and comment period. The commission in an appropriate case may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act.

(Prior code § 138-6)

#### 12.40.080 Permit--Issuance or denial.

A. If the commission, after a public hearing and comment period, determines that the proposed activities which are the subject of a notice of intent are not likely to have a significant or cumulative effect upon the wetlands values protected by this chapter, the commission, within twenty-one (21) days of the close of a public hearing and comment period, shall issue a permit for the activities requested. If it issues a permit, the commission shall impose conditions, which the commission deems necessary or desirable to protect those wetlands values, and all activities shall be done in accordance with those conditions.

B. The commission is empowered to deny a permit for failure to meet the requirements of this chapter; for failure to submit necessary information and plans required or requested by the commission; for failure to meet the design specifications, performance standards, policy guidelines or other requirements in regulations of the commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetlands values protected by this chapter; where it is deemed that the denial is necessary to preserve the environmental quality of resource areas; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing and comment period.

(Prior code § 138-7)

#### 12.40.090 Burden of proof.

The applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application will not have an unacceptable, significant and/or cumulative effect upon the wetland values protected by this chapter. The inability to prove, by a preponderance of credible evidence, that the proposed work will not have such unacceptable, significant and/or cumulative effect upon the wetland values protected by this regulation shall be sufficient cause for the commission to deny a permit or grant a permit with conditions.

(Prior code § 138-12)

#### 12.40.100 Additional regulations--Authority of commission.

After public notice and public hearing, the commission may, from time to time, promulgate performance standards and design specifications, policy guidelines and other rules and regulations to accomplish the purposes of this chapter. Failure of 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.

(Prior code § 138-8)

#### 12.40.110 Security.

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

A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the reasonable judgment of the commission.

B. By a 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 town or its inhabitants whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage.

(Prior code § 138-9)

#### 12.40.120 Enforcement.

A. The commission, its agents, officers and employees shall have the authority to enter up privately owned land for the purpose of performing their duties under this chapter. With the authority of the property owner or his or her designee, the commission may make or cause to be made such examinations, surveys or sampling as the commission deems necessary.

B. The commission shall have the authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions.

C. Upon request of the commission, the town council and town attorney may take legal action for enforcement under civil law. Upon request of the commission, the chief of police may take legal action for enforcement under criminal law.

D. Upon request of the commission, municipal boards and officers, including any police officer, natural resource officer or other officer having police powers, shall have the authority to assist the commission in enforcement.

(Prior code § 138-10)

12.40.130 Violation--Penalty.

A. Any person who violates any provision of this chapter or regulations or permits issued hereunder shall be punished by a fine of not more than three hundred dollars (\$300.00). Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of this chapter, regulations or permit violated shall constitute a separate offense.

B. In the alternative to criminal prosecution, the commission may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D.

(Prior code § 138-11)

12.40.140 Severability--Permits or determinations not invalidated.

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

(Prior code § 138-14)

12.40.150 Miscellaneous fees for the conservation commission.

TABLE INSET:

Winthrop Locus Maps:	
Online: <a href="http://www.town.winthrop.ma.us">www.town.winthrop.ma.us</a> (boards and committees)	free
Conservation commission - color locus maps	\$1.00 each
Newspaper Legal Notice submitted with application (check made out to "Winthrop Sun Transcript")	\$50.00
Violations and penalties	Up to \$300.00/day

Massachusetts Wetland Protection Act:	
DEP WPA Form 1	\$25.00
DEP WPA Forms 3 and 4 Total cost defined by project Category activity as follows:	

TABLE INSET:

Category Activities and Fees	
Category 1 (Fee for each activity is \$110.00):	
a)	work on single family lot; addition, pool, etc.;
b)	site work without a house;
c)	control vegetation;
d)	resource improvement;
e)	work on septic system separate from house;
f)	monitoring well activities minus roadway;
g)	new agricultural or aquaculture projects.
Category 2 (Fee for each activity is \$500.00)	
a)	construction of single family house;
b)	parking lot;
c)	beach nourishment;
d)	electric generating facility activities;
e)	inland limited projects minus road crossings and agriculture;
f)	each crossing for driveway to single family house;
g)	each project source (storm drain) discharge;
h)	control vegetation in development;
i)	water level variations;
j)	any other activity not in Category 1, 3, 4, 5 or 6;
k)	water supply exploration.
Category 3 (Fee for each activity is \$1,050.00)	
a)	site preparation (for development) beyond Notice of Intent scope;
b)	each building (for development) including site;

	c)	road construction not crossing or driveway;
	d)	hazardous cleanup;
	e)	water supply development.
Category 4 (Fee for each activity is \$1,450.00):		
	a)	each crossing for development or commercial road;
	b)	dam, sluiceway, tidegate (safety) work;
	c)	landfills operation/closures;
	d)	sand and gravel operations;
	e)	railroad line construction;
	f)	bridge;
	g)	hazardous waste alterations to resource areas;
	h)	dredging;
	i)	package treatment plant and discharge;
	j)	airport tree clearing;
	k)	oil and/or hazardous material release response actions.
Category 5 (Fee is \$4.00 per linear foot; total fee not less than \$100.00 or more than \$2,000.00):		
	a)	work on docks, piers, revetments, dikes, etc. (coastal or inland).
Category 6 (Fee is \$2.00 per linear foot; but not to exceed \$200.00 for activities associated with a single family house or \$2,000.00 for all other activities)		

**Editor's note:** The fees in this section were added in Supplement No. 1 at the direction of the town and in accordance with the town manger's fee schedule.