
Town of Merrimac, Massachusetts

Wetlands Protection Regulations

Effective 09-08-04



Merrimac Conservation Commission

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APPENDIX A - APPLICATION CHECKLISTS

- Request for Determination of Applicability
- Abbreviated Notice of Resource Area Delineation
- Notice of Intent

APPENDIX B - WPA ACTIVITY CATEGORY DEFINITIONS

APPENDIX C - VERNAL POOL CRITERIA

APPENDIX D - WAIVER REQUEST FORM

APPENDIX E - ORDER OF CONDITIONS CERTIFICATION FORM

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APPENDIX G - MERRIMAC WETLANDS PROTECTION BYLAW

MERRIMAC WETLAND PROTECTION REGULATIONS

1.0 General Provisions

1.1 Authority

These Regulations are promulgated under the authority of the Home Rule Amendment Article LXXXIX (89), of the amendments of the Constitution of Massachusetts, 1966 as amended from time to time, and in accordance with the Merrimac Wetlands Bylaw and shall be effective upon fulfillment of all legal requirements.

1.2 Purpose

The purpose of the Merrimac Wetlands Protection Bylaw (hereafter referred to as the "Bylaw") is clearly stated in Section 1.1 of the Bylaw. These Regulations are promulgated to ensure fairness, to create a uniformity of process and to clarify and define the provisions of the Bylaw, administered by the Merrimac Conservation Commission, hereafter called the "Commission" or "MCC".

Wetlands contribute to a number of public interests and are therefore protected by the Bylaw. The Bylaw identifies three additional public interests not recognized by the Massachusetts Wetlands Protection Act ("the Act" or "WPA"). These are: "the prevention and control of erosion and sedimentation, the protection of wildlife, and the protection of recreation". Any permit issued under the Bylaw and Regulations must therefore not adversely affect these additional public interests.

1.3 Jurisdiction

The areas subject to protection under the Bylaw differ from those protected solely by the Act in that additional wetland resource areas are protected by the Bylaw, as well as the additional interests previously described. The additional areas subject to protection under the Bylaw include the Buffer Zone, Vernal Pools, Vernal Pool Habitat and Isolated Vegetated Wetlands that do not meet the definition of Bordering Vegetated Wetland under the Act.

The Town's wetland resource areas consist of:

1. any Isolated Vegetated Wetland;
2. any Vernal Pool and Vernal Pool Habitat;
3. any vegetated wetlands bordering on any creek, river, stream, pond or lake (bordering vegetated wetland);
4. any bank, beach, marsh, wet meadow, bog, or swamp;

5. any land under any creek, river, stream, pond or lake;
6. any 100-foot Buffer Zone of wetland areas 1-5 listed above;
7. any land subject to storm flowage, or flooding by groundwater or surface water;
8. and the 200-foot Riverfront Area.

The following waterbodies and contiguous 200-foot zones on either side of the mean high water elevations of these waterbodies have been identified by the Commission as having Riverfront Areas: Back River, Cobblers Brook, Presby's Creek, East Meadow River, and the Merrimack River.

Rivers or streams not referenced above or not otherwise depicted on the current revision of the Merrimack area USGS map may still have a 200-foot Riverfront Area associated with them per 310 CMR 10.58 (latest amendment), which the Commission has adopted by reference into these Regulations. Applicants shall evaluate said rivers or streams in accordance with 310 CMR 10.58(2) and this Bylaw and include such data in the submitted permit application.

1.4 Fee Schedule

The following fee schedule has been determined by the Commission to be commensurate with the expense of providing review services to applicants (exclusive of design review fees by expert engineers and consultants) and shall be paid at the time an application or other request for Commission approval is filed. These fees are in addition to and commensurate with those required by the Wetlands Protection Act (WPA) (except where otherwise noted). This fee schedule may be amended as necessary by majority vote of the Commission at any public hearing.

NOTE: Similar to 310 CMR 10.03(7), when the work involves activities within the Riverfront Area as well as another resource area or the Buffer Zone, the fee shall be determined by adding an additional 50% of the fee calculated for activities in another resource area(s) or the buffer zone to another resource area for each of the proposed activities within the Riverfront Area. When the work involves activities within the Riverfront Area but no other resource area, the fee shall be determined by adding the fees for each of the proposed activities within the Riverfront Area.

Table 1-1: Bylaw Filing Fee Schedule

WPA Filing Fee Category (per activity) ⁽¹⁾	Equivalent Bylaw Fee (per activity)
Notice of Intent/RDA - WPA Cat 1 Activity	\$105 (add 50% if in Riverfront Area in addition to another resource area)
Notice of Intent/RDA - WPA Cat 2 Activity	\$300 (add 50% if in Riverfront Area in addition to another resource area)
Notice of Intent/RDA - WPA Cat 3 Activity	\$575 (add 50% if in Riverfront Area in addition to another resource area)
Notice of Intent/RDA - WPA Cat 4 Activity	\$775 (add 50% if in Riverfront Area in addition to another resource area)
Notice of Intent/RDA - WPA Cat 5 Activity	\$2 per ft.⁽²⁾/min. \$50/not to exceed \$1,000 (add 50% if in Riverfront Area in addition to another resource area)
Notice of Intent/RDA - WPA Cat 6 Activity	\$1 per ft.⁽²⁾/min. \$100 (add 50% if in Riverfront Area in addition to another resource area)
ANRAD Filing	\$1 per ft.⁽²⁾/min. \$100/max.\$3,000 (add 50% if in Riverfront Area in addition to another resource area)
Modification/Amendment Request	\$100
Partial Certificate of Compliance Request	\$100
Certificate of Compliance (2 nd request only; there is no charge for first request.)	\$100
Extension Permit Request	\$100
Emergency Certification Request	\$100

(1) Activity Category defined per CMR 310.0, section 10.03 par. 7. See Appendix B

(2) Per foot of delineated wetlands

1.5 *Officers and Members*

Officers

There shall be a Chair and Vice-Chair, who shall be elected by a majority vote of the eligible Commission members. The term of office shall be one year, commencing and ending with the second regular Commission meeting following the adjournment of the annual Town meeting. In the event of a vacancy, the Vice-Chair shall succeed to the position of Chair, and a new Vice-Chair shall be elected by the eligible Commission members.

Members

New Commission members shall be appointed by the Board of Selectmen. The Commission shall offer its views to the Selectmen on the qualifications and suitability of potential candidates.

A quorum consists of a majority of the commission members who are serving in office at the time a vote is taken by the Commission. A majority vote of a quorum of the Commission shall constitute the decision of the Commission.

The members have such powers as are vested in them by any law or regulation, custom and practice.

Committees

There shall be such committees as the Commission may decide are necessary for the efficient execution of its duties.

Consultants

The Commission may, by vote at any public meeting, appoint consultants to the Commission as allowed in Section 1.13 of the Bylaw and in MGL Ch.40 S.8C. Such consultants shall not have the right to vote, nor to represent themselves as official members of the Commission, but shall have the right to participate in meetings and activities of the Commission, as the Chair (or Vice-Chair) may designate upon the advice and consent of the Commission.

Associate Members

Associate members may be appointed by the Selectmen, in concert with the Conservation Commission and shall be designated as consultants in accordance with MGL Ch.40 S C. Notwithstanding the provisions of any general or special law to the contrary, the Board of Selectmen of the Town of Merrimac may appoint up to two alternate members of the Conservation Commission for a term of one year. When the Conservation Commission lacks a quorum for reasons of absence, inability to act or a conflict of interest, the Chairperson of the Conservation Commission may designate an alternate to sit on the Commission. The Commission shall offer its views to the Selectmen on the qualifications and suitability of potential candidates.

2.0 Definitions

Massachusetts General Laws, Chapter 40 Section C and Chapter 131, Section 40 (hereafter referred to as the "Act"), as well as 310 CMR 10.00 Wetlands Regulations are hereby incorporated by reference and made a part hereof, except as otherwise modified by the Merrimac Wetlands Bylaw and the Regulations promulgated herein and any subsequent amendments. The definitions provided in the WPA regulations 310 CMR 10.04 shall apply to the Bylaw and Regulations and as modified below:

1. Adjoining Land Area(s) means the Buffer Zone measured 100 feet horizontally from the boundary of any wetland resource area as defined by the Act or the Bylaw.
2. Alter shall include without limitation, the following actions when undertaken in areas subject to the Bylaw:
 - A. changing of pre-existing drainage characteristics, sedimentation patterns, flow patterns or flood retention characteristics;
 - B. placement of fill, excavation or re-grading;
 - C. destruction of plant life, including mowing, and the cutting and/or removal of trees or shrubs;
 - D. changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water;
 - E. any activities, changes or work which pollute or cause displacement of any body of water or groundwater;
 - F. any activities, changes or work which cause alteration of wildlife habitat.
3. Amendment means a change in the project that the Commission deems of sufficient magnitude that will require the imposition of additional conditions to ensure adequate protection of resource areas and interests covered under this Bylaw and Regulations (see Section 11.0).
4. Bordering Vegetated Wetlands protected under this Bylaw are freshwater wetlands that border on creeks, rivers, streams, ponds or lakes. The types of Bordering Vegetated Wetlands may include wet meadows, marshes, swamps and bogs. In addition to the minimum size requirement, Bordering Vegetated Wetlands must be comprised of the following three (3) delineation parameters:

- A. The vegetation community of a Bordering Vegetated Wetland consists of 50% or more wetland indicator plants. Wetland indicator plants are classified in the following categories: Facultative, Facultative+, Facultative Wetland-, Facultative Wetland, Facultative Wetland+, or Obligate Wetland (*source: Reed, P.B., 1988, "National List of Wetland Plants that Occur in Wetlands in Massachusetts", U.S. Fish & Wildlife Service, or it's most recent revision*) and wetland plants specifically indicated in the Act and,
 - B. Other indicators of hydrology including site inundation or saturation, water marks, drift lines, sediment deposits, oxidized rhizospheres, water-stained leaves, shallow root systems, buttressed tree trunks, recorded hydrologic data (stream or lake gauge, aerial photo, other) and plants that exhibit morphological adaptations to wetlands (*source: Tiner, R. W., 1991, Bioscience 41: 236-247*) and,
 - C. Hydric Soils (*source: New England Hydric Soil Technical Committee, 1998, 2nd Edition, "Field Indicators for Identifying Hydric Soils in New England", New England Interstate Water Pollution Control Commission, or it's most recent version*).
5. Buffer Zone is that resource area which extends one-hundred feet (100') from the edge of those wetland resource areas identified in Section 1.0. However, it is possible that these resource areas will overlap in some instances (e.g. Riverfront Area and Land Subject to Flooding).
- A. 25' No-Disturbance Zone is that portion of the Buffer Zone which extends twenty-five feet (25') from the edge of those wetland resource areas identified in Section 1.3, however, it is possible that these resource areas will overlap in some instances (e.g. Riverfront Area and Land Subject to Flooding). Disturbance of any kind is prohibited within this Zone including but not limited to grading, landscaping, vegetation removal, grazing, dumping of landscaping debris, pruning, filling, excavating, roadway construction and/or driveway construction.
 - B. 50' No-Build Zone is that portion of the Buffer Zone which extends fifty-feet (50') from the edge of those wetland resource areas identified in Section 1.3, however, it is possible that these resource areas will overlap in some instances (e.g. Riverfront Area and Land Subject to Flooding). Construction of any kind is prohibited within this Zone including but not limited to foundations associated with single family homes, multi-family