

LUDLOW CONSERVATION COMMISSION BYLAWS

1. Purpose

The purpose of this bylaw is to assist the Conservation Commission in protecting the wetlands, water resources, and adjoining land areas in the Town of Ludlow by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, fisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, and recreation values, deemed important to the community.

2. Jurisdiction

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, banks, reservoirs, lakes, ponds of any size, rivers, streams, creeks, beaches, lands under water bodies, lands subject to flooding or inundation by groundwater or surface water, and lands abutting any of the aforesaid resource areas (collectively the "resource areas protected by this By-law"). Said resource areas shall be protected whether or not they border surface waters. This jurisdiction shall extend to a buffer area of 100 feet away from any of the above described resource areas and is extended to a buffer area of 200 feet away from a river or stream. Except where permitted by the Wetlands Protection Act, no person shall develop or disturb an area within 25 feet of the above described resource areas, to be known as a minimum non-disturb zone.

2.a. Exceptions:

In a case of Public Utilities, where no feasible alternatives exist and no permanent damage will occur to the wetland, the Conservation Commission may at its discretion grant a variance to the "25 foot no disturb zone".

In the case where no feasible alternatives exist but to encroach upon the wetland in order to allow the applicant access to his/her property, the Conservation Commission may at its discretion grant a variance to the "25 foot no disturb zone" provided no permanent damage will occur to the wetland and/or proposed replication is agreed upon by all parties.

(Amended 5/14/2001)

2.b. Flood Control:

Any proposed work in the Floodplain or Isolated Areas or Bordering Land subject to Flooding may not begin without first filing a Notice of Intent with the Conservation Commission and must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws, and 310 CMR 10.57, and the Massachusetts Building Code pertaining to construction in the Floodplains (currently Section 3107.0) (revised 9/19/97).

The Floodplain District is delineated on the Ludlow Flood Insurance Rate Map (FIRM), dated May 19, 1981, as Zones A, A 1-30 to indicate the 100-year floodplain. The precise boundaries

Of the district are defined by the 100-year flood elevations shown on the FIRM and further defined by the Flood Profiles contained in the Flood Insurance Study dated May 19, 1981. Within Zone A, where the 100-year flood elevation is not provided on the FIRM, the developer/applicant shall obtain any existing flood elevation data and it shall be reviewed by the Department of Public Works. If the data is sufficiently detailed and accurate it shall be relied upon to require compliance with this Bylaw and the State Building Code. (added 10/3/2005)

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3. Coordination with Other Boards

Any person filing a permit application or a Request for a Determination of Applicability under the Massachusetts Wetlands Protection Act with the Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the Conservation Commission of the adjoining municipality, if the application or Request for a Determination of Applicability pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered shall be filed with the Commission.

In order to ensure that the Conservation Commission is aware of any property being built upon or development within its jurisdiction as defined above, the Conservation Commission shall be provided by the applicant with a copy of any permit application submitted to other Town Boards and Officials including but not limited to the Building Department, Department of Public Works, Planning Board and Board of Health. Notice of said requirement shall be posted in appropriate permitting places by the Conservation Commission. The Conservation Commission shall provide Public Hearing Notices to the above-mentioned Boards. **(Amended 5/8/00)**

4. Performance Guarantees and Security

As part of a permit issued under this bylaw, except for permits issued for work being performed or contracted by any department or agency of the Town of Ludlow, and in addition to any security required by any other municipal or state board or agency, 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) A financial guarantee, such as a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission. Surety performance bonds, cash escrows, and standby letters of credit are the usual forms of financial guarantees that will be accepted. Property escrows will not be accepted. Permittee shall submit their estimates of what the required improvements will cost, preferably with contractors bids to perform the work.

The term of any financial guarantees must be at least nine months longer than the time a permittee has to complete a project. The Commission, at its discretion, may allow partial or complete release of guaranteed funds as sections of a project are completed. The Commission has the right not to release part of the guaranteed funds until after the project is finished and a certificate of compliance is issued.

The Commission has the right to reject the terms of a proposed financial guarantee, including the financial institution holding guaranteed funds if it is not a local bank, and to determine the amount of funds that must be guaranteed. The Commission's only duty to secure release of guaranteed funds is to certify that required improvements or conditions have not been completed on time or to a satisfactory standard, as defined by the Commission.

At the discretion of the Commission, a joint financial guarantee may be used to comply with Commission requirements and that of other agencies, boards, and commissions in the Town of Ludlow, provided however that all relevant parties agree on the terms and the principal amount of the guarantee, and that the guarantee is structured so that all relevant parties agree before any funds are released.

- (b) A conservation restriction, easement, or other covenant enforceable in a court of law, shall

be executed and duly recorded by the owner of record, running with the land to the benefit of this municipality and observed before any lot may be conveyed other than by mortgage deed.

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5. Enforcement

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original conditions, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Any person who violates provisions of this bylaw 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.

Upon request of the Commission, the Board of Selectmen and the town counsel 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.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this bylaw, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than \$300.00. 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 bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedure set forth in M. G.L. Ch 40 §21D, which has been adopted by the Town in Chapter 13, Section 1 of the general bylaws. **(Added 4/13/98 ATM)**

6. Payment of Fees and Commission Expenses (added 5/8/2006)

At the time of a permit application (Notice of Intent or Request for Determination of Applicability) the applicant shall pay a filing fee as specified in the **Regulations of the Ludlow Conservation Commission**. This fee is in addition to that required by the Wetlands Protection Act (M.G.L. Chapter 131, Section 40) and regulations (310 CMR 10.00.) At any point in its deliberations prior to a final decision, if in the judgment of a majority of the Commission, consulting services are necessary for the Commission to comprehend the project impact completely, the applicant will reimburse the Town of Ludlow for consultant fees. The town is to be reimbursed in full prior to a decision on the request or application. Failure to reimburse the town for such necessary consultant fees will be sufficient grounds to deny the application or request. **(Added May 8, 2006)**