

TOWN OF PALMER WETLANDS REGULATIONS 1988

1. INTRODUCTION

These regulations are promulgated by the Palmer Conservation Commission (PCC) pursuant to the authority granted under the Town of Palmer General Bylaws Chapter 168, adopted at Special Town Meeting, Warrant Article 4, September 12, 1988 and approved September 12, 1988 and approved by the Attorney General October 7, 1988.

2. PURPOSE

The bylaw established a decision-making and permit process by which the PCC will regulate activities affecting wetlands, surface waters, banks, beaches, flood prone areas and buffer areas around these “resource areas”. Regulation is for the purpose of preventing: damage to public good or private water supply or groundwater, flooding, erosion or sedimentation, storm damage, water pollution, and damage to fisheries, wildlife habitat, recreation, aesthetic and agricultural values.

The purpose of these regulations, as required by § 8 of the bylaw, is to define and clarify that process by establishing uniform standards, procedures and policies by which the PCC will carry out its responsibilities.

3. DEFINITIONS

Abutter is any landowner, as determined by the most recent assessor’s records, whose land immediately abuts the property which is the subject of notification, or whose land lies across a public or private traveled way or across any river, stream, pond or lake or downstream to a distance of 300 feet. In particular cases, the PCC can add persons to the list of abutters to be notified, or can waive notice if it deems that certain abutters will not be significantly impacted.

Bank is any land adjoining any body of water, which confines such water.

Issuance of an order shall be determined under the state regulations promulgated under the state Wetland Protection Act (WPA) in 1983.

Land Subject to Flooding is land subject to inundation from any source of water, including a rise in groundwater, up to the level of the “100 year flood or storm”, determined as under the state WPA regulations.

Pond includes any body of fresh water of any size, including vernal pools as defined in the state WPA regulations.

Resource Area is a term including all areas listed in § 2 above.

Stream includes any body of running water moving in a channel in the ground, including intermittent streams and headwaters of streams above the point where there are wetlands adjoining them.

Wetlands under this bylaw, includes wet meadows, marshes, bogs and swamps of all kinds, regardless of whether they border on surface waters.

4. PROCEDURES

- A. Unless otherwise indicated in the bylaw or these regulations, definitions, timeframes, forms and procedures shall be the same as under the state WPA. This will be indicated by addition of reference to the Town of Palmer bylaw under the DEQE heading on the DEQE forms and in publication of notice of hearing. Because the town bylaw and these regulations add new jurisdiction (e.g. vernal pools, 100-foot buffer around floodplains, headwaters of streams and isolated wetlands) and cover new wetlands values, some notices, conditions, etc. issued by the PCC under the bylaw may differ from decisions issued under the state law. Where this happens, the PCC shall endeavor to make clear the distinction. Where clarity demands it, the PCC can use its own forms.
- B. Notice of hearings shall be the same as under the WPA, with the addition of reference to the town bylaw and notice to abutters as required under § 5 of the bylaw. All hearing notices shall be published at the expense of the applicant.
- C. Public hearings shall be held in accordance with the state WPA, except that hearings may be continued by the PCC as set out in § 5 of the bylaw. If continuance is to a date certain, then no further publication is required; if not, then notice must be replenished.
- D. Determinations and Orders of Condition issued under the bylaw are good for only one year, while Determinations and Orders issued under the state WPA are good for three years. Extensions are available according to the terms of the bylaw.
- E. The PCC may deny any application under this bylaw for good cause; including: failure to supply needed information, failure to meet the requirements of the bylaw or regulations, possibility of significant damage to the resource areas covered by the bylaw, including incremental damage and damage from erosion, sedimentation, runoff or effluent coming into the buffer area or resource areas.
- F. Certificates of compliance may be requested and issued under the bylaw in accordance with the regulations for such certificates under the state WPA.

5. RECORDING OF DETERMINATIONS AND ORDERS OF CONDITION

Every Determination of Applicability issued under this bylaw shall be recorded by the applicant in the registry of deeds within 20 days after it becomes final, and notice of such recording sent to the PCC. If the applicant fails to so record, the PCC may do so at its own or the applicant's expense. Every Order of Conditions issued under this bylaw shall be similarly recorded, by the applicant of the PCC. No work shall commence on any area encompassed by this bylaw without such recording.

6. CHANGE IN PLANS

The PCC may make clerical changes to a Determination or an Order of its own accord or upon application. Typical clerical changes include changing the name of the landowner or correcting typographical errors. Substantive changes require new hearings.

7. EXTENSIONS

The PCC may extend an Order of Conditions for one or more periods of one year each to a total of six years if the extension is requested in writing within two weeks before the expiration date, as set out in § 7 of the bylaw.

The PCC may deny a request for an extension and require a new Notice of Intent under any of the following circumstances:

- A. Where no work has begun on the project within two years after issuance of the first Order, and the PCC is not satisfied that the delay was unavoidable;
- B. Where an extension was not requested before the order expired;
- C. Where new information, not given to the PCC at the time of the Order was issued, indicates the Order is not adequate to protect the resource areas;
- D. Where work has been done in violation of the Order or these regulations;
- E. Where work has caused damage to the resource areas; or
- F. Where work has been done that does not conform to approved plans, or plans have been materially changed.

8. REVOCATIONS

The PCC may revoke an Order of Conditions for the reasons set out in 7C, D, E or F provided a hearing is held and the applicant is given a chance to explain.

9. APPEALS

Any person aggrieved by the decision of the PCC, whether or not previously involved in the proceedings, may appeal the decision of the PCC under provisions of the General Laws. Notice of said appeal and a copy of the complaint shall be sent by certified mail or hand delivery to the PCC (or its authorized representatives if it names one) and to town counsel.

10. POLICIES OF THE PCC

These policies are set forth to give guidance to the PCC and to applicants and townspeople on a number of issues which frequently arise in the regulation of these resource areas.

- A. Identification of Wetlands Vegetation** - In any case where the issue of wetlands boundaries arises, the PCC may require the applicant to employ a qualified wetlands scientist to identify the vegetation. If vegetation has been disturbed or destroyed, the PCC may require and use a soil analysis. Normally,

vegetation shall not be determined after the growing season or in drought conditions.

- B. Wildlife Habitat** - On application for approval of a project involving the disturbance of more than five acres of resource areas protected by this bylaw, the PCC may require that the applicant hire a competent wildlife biologist to analyze the wildlife habitat value of the area to be disturbed and adjacent areas and the impact of the proposed development on wildlife populations and also to propose measures to mitigate these impacts. Where project site warrants, the PCC may require submission of quantitative habitat analysis such as the Habitat Evaluation Program developed by the U.S. Fish and Wildlife Service.
- C. Development in Floodplain** - Both the state wetlands land and the town zoning permits some development in floodprone areas subject to this bylaw. Buildings in floodplains, even if well designed, may be seriously damaged by floodwaters and debris. Access to such structures is hazardous and sometimes impossible. Furthermore, vehicles and their accessories (road salt, sand, oil and gas) stored in the floodplain will pollute surface water during flooding events, as well as themselves become dangerous debris. Therefore, the PCC shall not generally permit any buildings or storage of autos or other vehicles in any area located below the 10-year flood level. The 10-year flood level, as well as the 100-year flood elevation, must be shown on the applicant's plans. One hundred percent compensatory storage at the same elevation is required for all filling and building in floodplains.
- D. Use of "Buffer" Areas** - It is the policy of the PCC to consider the 100-foot jurisdictional area around the wetlands, floodplains, banks, etc. as a buffer area, in which work shall be minimized in order to protect the resource areas, which are the focus of this bylaw. What can be permitted in the buffer areas will depend on such elements as: proximity to the resource area, sensitivity of the resource area, slope, soil types, likelihood of erosion, groundwater direction, whether effluent will be emitted in the buffer area and similar criteria. In general, except for minor activities which can be accomplished without bringing in large machinery, the PCC will require that the 50-foot nearest the resource areas, especially banks and vegetated wetlands, be left in their natural conditions during and after work, with preservation of natural vegetation. However, in cases where upland property abuts a lake or pond some minor alterations may be permitted within 50-feet of this water body so that the owner may enjoy some access to and enjoyment of the adjacent water body. The PCC will consider such criteria as described above in this paragraph in considering the permit.

The banks and streams, dingles and surface drainage gullies are unstable, inviting erosion and structural instability. Even though the height of such slopes may exceed the definition of the word "bank" because the water would not come to the top of the slope even in the 100-year flood, the PCC will require a minimum 25-foot setback from the top of any such bank slope, for any construction.

Where a vegetative buffer is required, only 50% of trees may be removed, in more or less equal spacing; brush may be cut back but not removed and elevated paths and stairways may be required.

In especially sensitive areas, the PCC may require that the landowner execute a covenant running with the land to protect the resource areas and adjacent undeveloped buffer strips. Where possible, this shall be processed as a “conservation restriction” under the provisions of GL ch. 84 § 31-33. The wording of such a covenant may vary, depending on resource areas involved: for example, farming and forestry may be permitted in floodplains. The aim of such a covenant is not to further restrict the use of land beyond the conditions set out in the Order of Conditions: it is to insure that areas which that Order protects will remain protected after the Order has ceased to be effective and/or the property has been transferred. For this reason, any such covenant shall run with the land, and shall be recorded with the registry of deeds before any work is done under the Order or before the property is transferred to another owner.

- E. Vernal Pools or Ponds** - It is the policy of the CC to protect vernal pools because they provide valuable and increasingly rare wildlife habitat. Because these ponds do not contain water at all seasons of the year, a vernal pool must be identified in order to be protected. This can be done as part of the Determination of Applicability or part of the Notice of Intent review, or prior to these processes by the landowner, PCC or other qualified person. The PCC must be satisfied that the person so identifying a vernal pool is qualified to do so.
- F. Drainage** - Because of dangers of offsite flooding and/or loss of natural recharge, it is the policy of the PCC that there be no net increase in runoff from a site after its development. To this end, the CC may require detention ponds or swales to hold runoff, which shall be maintained by the landowner, as well as retention ponds to limit peak runoff.
- G. Agricultural Work** - The PCC represents the exception for maintenance of land in agricultural use set out in § 2 of the bylaw. “Land in agricultural use” shall be defined as under the state WPA regulations.

However, it is the policy of the PCC that “maintenance” of such agricultural land is limited to customary tilling and harvesting practices; addition of organic materials and chemicals subject to state and federal regulation; and building of fences and structures on upland. Improvements such as the building of ponds, dams, water control structures, sediment basins and related activities are therefore not exempt under this bylaw, even if they are carried out on land actively devoted to agriculture. It will be the policy of the PCC to approve such activities after a Notice of Intent is duly submitted, if they can be carried out without undue damage to resource areas. Every such application should include a plan approved by the Conservation District of the Soil Conservation Service.

- H. Mitigation** - The PCC recognizes that the state WPA regulations permit but do not require the CC to approve certain activities in wetlands, e.g.: driveways

through wetlands to reach upland of the same owner, and up to 500 square feet of fill in wetlands where wetlands are replicated elsewhere on site. In general, it is the policy of the PCC under the town bylaw not to permit alteration of wetlands because of scientific determinations (including those found in the Preamble to the state WPA regulations) that the replication does not in fact substitute for many wetlands values. The PCC may therefore forbid multiple access to wetlands and/or scale down that access so it may not be possible to develop the whole site. The PCC will not consider replication of wetlands adequate mitigation for the destruction of natural wetlands. The PCC believes that alteration of wetlands should generally be permitted only where, and to the extent that, in the absence of such alteration the landowner will be deprived of substantially all economic use of the property.

11. ENFORCEMENT

The PCC is the designated authority of the Town of Palmer, authorized and directed to enforce the bylaw. Members and agents of the PCC may enter upon privately owned land for the purpose of performing their duties under the bylaw and these regulations.

When the PCC determines that an activity is in violation of the bylaw or of these regulations, or of a final Order of Determination, the PCC may issue an Enforcement Order in the same form as that used under the state WPA or in any other form.

The order shall normally be signed by a majority of the PCC; but in a situation requiring immediate action, the Order may be signed by a single member or an agent of the PCC, provided this action is ratified by a majority of members at the next scheduled meeting of the PCC.

Any person who violates any provision of this bylaw, these regulations or a permit issued thereunder shall be punished by a fine of not more than \$300.00 for each day or portion thereof during which a violation continues shall constitute a separate offense. It is the intent of these regulations that permitting fill or other legal activity to remain in an area constitutes a continuing offense.

12. FILING FEE

The PCC's filing fees under this bylaw shall be as follows:

- \$25.00 for the first acre of land upon which alteration of any kind is proposed
- \$50.00 for each acre of land thereafter upon which the alteration is proposed

This fee is in addition to the fee under the state WPA, and in addition to the publication fees to be paid by the applicant under this bylaw and the state WPA. The fee shall be calculated by the applicant and paid when the application is filed. If the PCC determines the fee was incorrectly computed, it shall so state at the hearing. Failure to pay the proper fee is cause for denial of an application.

The PCC may waive the filing fee, or reimburse it if the waiver is not sought before filing, based on such considerations as: hardship to the applicant; the size of the project; and the perceived level of difficulty of reviewing the project.

The purpose of the fee is to cover the normal predictable expenses of the PCC in reviewing the project.