Proposed Revisions to the Town of Westborough Wetlands Protection Regulations

Implementing Town of Westborough, Massachusetts Non-Zoning Wetlands Protection Bylaw

Draft Dated April 12, 2012

Revision 1:

The purpose of this proposed revision is to address Isolated Lands Subject to Flooding (ILSF), which is detailed in the state regulations (310 CMR 10.57(1) through (4)). Currently, the Westborough Regulations do not define ILSF; require permit applicants to show ILSF on plans; or set local performance standards for projects that encroach on ILSF.

310 CMR 10.57 presumes that ILSF provide flood control, storm damage prevention, recharge to groundwater supplies, filtration to prevent pollution and wildlife habitat and that these stated functions can be altered or degraded by projects adjacent to, or in ILSF, the Westborough Conservation Commission has decided to amend the Wetlands Protection Regulations to include ILSF.

Proposed Revisions:

Section 1.1 Overview, paragraph 3 will be edited to include ILSF as follows (added text in boldface):

The Town of Westborough Wetland Protection Bylaw adds to the areas protected by the state Act any Vegetated freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs, lakes; ponds of any size; rivers; streams; creeks; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; **Isolated Lands Subject to Flooding** and lands within 100 feet of any of the aforesaid resource areas (collectively the resource areas protected by this Bylaw).

Section 2 Definitions – addition of a subsection 2.12 that reiterates the definition of an ILSF as stated in 310 CMR 10.57:

2.12 Isolated Land Subject to Flooding (ILSF)

As provided in 310 CMR 10.57(2)(b)1 through 3, the Town of Westborough definition of an Isolated Land Subject to Flooding *" . . .is an isolated depression or closed basin without an inlet or an outlet. It is an area which at least once a year confines standing water to a volume of at least ¼ acre-feet and to an average depth of at least six inches. Isolated Land Subject to Flooding may be underlain by pervious material, which in turn may be covered by a mat of organic peat or muck . . . The boundary of Isolated Land Subject to Flooding is the perimeter of the largest observed or recorded volume of water confined in said area."*

If there is a question regarding whether the extent of water confined in an ILSF, calculations to determine the volume of standing water shall be based on the total volume (rather than peak rate) of run-off from the drainage area contributing to the ILSF and the assumption that there is no infiltration of said run-off into the soil within the Isolated Land Subject to Flooding as stated in 310 CMR 10.57(2)(b)3.

Section 3 Jurisdiction – addition of a subsection 3.3 that reiterates the jurisdiction for ILSF as specified in 310 CMR 10.57:

3.3 Isolated Land Subject to Flooding

As stated in 310 CMR 10.57, an Isolated Land Subject to Flooding (ILSF) is an area that is "*likely to be locally significant to flood control and storm damage prevention. In addition, where such areas are underlain by pervious material they are likely to be significant to public or private water supply and to ground water supply. Where such areas are underlain by pervious material covered by a mat of organic peat and muck, they are also likely to be significant to the prevention of pollution. Finally, where such areas are vernal pool habitat, they are significant to the protection of wildlife habitat.*

ILSF provides a temporary storage area where run-off and high ground water pond and slowly evaporate or percolate into the substrate. Filling causes lateral displacement of the ponded water onto contiguous properties, which may in turn result in damage to said properties.

ILSF, where it is underlain by pervious material, provides a point of exchange between ground and surface waters. Contaminants introduced into said area, such as septic system discharges and road salts find easy access into the ground water and neighboring wells. Where these conditions occur and a mat of organic peat or muck covers the substrate of the area, said mat serves to detain and remove contaminants which might otherwise enter the ground water and neighboring wells."

Where a project involves removing, filling, dredging or altering of ILSF, the Conservation Commission shall presume that the ILSF is a resource area significant to the roles outlined above and that this presumption can be overcome only upon a clear showing that it does not play any of those roles.

Section 5.10 Colors for Plan Contents – addition of highlighting for ILSF:

12. Dotted Blue: the edge of ILSF

Section 8.1 Minimum setback from resource area – Table of Setbacks

An additional row will be added to the table as follows

Type of work: Any activity abutting an ILSF, whether or not the activity is listed in any other category in this table

- Limit of Disturbance: 20 feet
- Limit of Structure: 20 feet

Revision 2:

A new section 5.3.6 will be added to the regulations (and the current Section 5.3.6 will thus become section 5.3.7). This section will be entitled "Underground Infiltration System Requirements"

The text of this section will read as follows:

Since subsurface infiltrations are difficult to maintain once installed, systems which accept surface water runoff (and thus excluding those which solely accept roof runoff), shall include an in-line proprietary runoff treatment structure prior to entrance into the infiltration bays. The purpose of the additional structure will be to ensure removal of suspended solids and other materials that may degrade the performance of the infiltration system over time.

Revision 3:

The purpose of this revision is to clarify an ambiguous sentence at the end of section 5.7, Self-Imposed Hardship. The sentence currently reads:

The Conservation Commission shall consider any future crossings or impacts proposed to be self-imposed and will not grant further crossings or alterations in subsequent filings ***on a lot-by-lot basis for any project****.*

The sentence will be modified to read:

The Conservation Commission shall consider any future crossings or impacts proposed to be self-imposed and will not grant further crossings or alterations in subsequent filings ***in any portion of the originally subdivided property****.*

Revision 4:

This revision addresses Section 5.8, "Activities in the Buffer Zone". The purpose of this revision is to clarify an ambiguous reference to an applicant's Certificates of Compliance. The sentence currently reads:

The Conservation Commission may determine that this presumption should not apply based on unusual characteristics of the site (e.g., steep slopes) or of the project (e.g., potential for impacts over time that may require oversight through continuing conditions in ***a*** *Certificate of Compliance).*

The sentence will be modified to read:

The Conservation Commission may determine that this presumption should not apply based on unusual characteristics of the site (e.g., steep slopes) or of the project (e.g., potential for impacts over time that may require oversight through continuing conditions in ***their*** *Certificate of Compliance).*

Revision 5:

This revision addresses Section 8.2, "Determining the Edge of a Wetlands/Resource Area". The change makes clear the Commission will not prevent a resource area evaluation, only that it may request deferral of such determinations until conditions are more optimal for such work. The sentence currently reads as follows:

The Conservation Commission or its consultant may not make a determination of a wetland/resource boundary when conditions prevent a visual examination (ex: snow cover or frozen ground).

The sentence will be modified to read:

The Conservation Commission or its consultant may not ***be able to*** *make a determination of a wetland/resource boundary when conditions prevent a visual examination (ex: snow cover or frozen ground).*

Revision 6:

This revision addresses Section 8.4.1, "Fees for Consultants to the Conservation Commission". The change corrects a transcription error which caused the text to be garbled. The beginning of the paragraph currently reads:

Such services shall be deemed *As provided by M.G.L. Chapter 44 Section 53G, the Westborough Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services. necessary by the Conservation Commission to come to a final decision . . .*

The beginning of the paragraph will be modified to read:

As provided by M.G.L. Chapter 44 Section 53G, the Westborough Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Conservation Commission, for specific expert services. ***Such services shall be deemed*** *necessary by the Conservation Commission to come to a final decision . . .*

Revision 7:

This revision addresses Section 8.6.1, "Non-Criminal Enforcement of Bylaws Violations". A single-line paragraph will be inserted at the end of the section which will read:

"No fines under this provision may be imposed until the property owner has been afforded at least 21 days to resolve any alleged violation."

The purpose of this revision is to make clear that fines will not be imposed without due diligence on the part of the Conservation Commission or the Conservation Officer to work with the property owner.

Revision 8:

This revision modifies Section 9, "Waivers". The purpose of this revision is to remove language that implies that waivers require significant standards that applicants need to satisfy in order to receive the waiver. In fact, the Conservation Commission routinely grants waivers that do not meet these standards. The Conservation Commission therefore decided to remove these criteria as unnecessary. The text to be removed is:

When evaluating whether to grant a waiver, the Conservation Commission will evaluate whether candidate projects will meet one or more of the following criteria in comparison with existing conditions:

- *The restoration of buffer zone.*
- *Decrease in untreated runoff.*
- *Decrease in runoff volume and rate.*
- *Stabilization of surface conditions.*
- *Enhancement of wildlife habitat.*