

**January 10, 2017 Special Town Meeting
Conservation Commission Article ____
Chapter 240 Wetlands Bylaw**

Article ____: To see if the Town will vote to amend the Bylaw Division I, Part II: General Legislation, Chapter 240 Wetlands, specifically Sections 240-1, 240-5, 240-6, 240-7, and 240-9, as detailed in the Conservation Commission's Report to Town Meeting, or take any other action thereto herein. (Proposed by the Conservation Commission)

The *proposed changes* are as follows:

1. In ***Section 240-1 Purpose and authority***, paragraph A, fourth line, insert a comma after "and".
2. In ***Section 240-5 Application for permits and requests for determination***, paragraph B, third line, replace "an" with "a".
3. In ***Section 240-6 Notice and hearings***, insert a new section to address the process for Request for Determination of Applicability (RFD) separately from the process for the three other permit applications (Notice of Intent, Abbreviated Notice of Intent, and Abbreviated Notice of Resource Area Delineation), and make the application process for a RFD consistent with the requirements of the Massachusetts Wetlands Protection Act, MGL Chapter 131, Section 40 as follows:

Insert new paragraph A as follows:

A. Request for Determination of Applicability

A RFD shall be submitted by certified mail or hand delivery to the Commission. The Commission shall conduct a public meeting on the RFD after written legal notice, given at the expense of the applicant, has been published at least five business days (not including Saturdays or Sundays) prior to the meeting, in a newspaper of general circulation in South Hadley. The Commission shall commence the public meeting on any RFD within 21 days from receipt of the properly completed application, unless an extension is authorized in writing by the applicant.

Create new subheader for the second paragraph as follows, and remove reference to RFDs as follows:

B. Notice of Intent (NOI), Abbreviated Notice of Intent, and Abbreviated Notice of Resource Area Delineation (ANRAD)

A permit application shall be submitted by certified mail or hand delivery to the Commission. Any person submitting a permit application to perform work in an area regulated by this bylaw or certify resource boundaries shall at the same time give written notice thereof, by mailing by certified mail, return receipt requested, or by hand delivery, to all abutters according to the most recent records of the Board of Assessors, including those across a traveled way or across a body of water (excluding the Connecticut River) from the parcel which is the subject of this application. The notice shall include a copy of the application or request, with plans, or shall state where copies may be examined. If the person filing the permit application is not the owner of the area subject to the request or application, the applicant shall also give written notice of

the permit application and hearing to the owner of the parcel. The person providing such notices to abutters or other property owners shall file an affidavit affirming that notification was done, with a copy of the notice, with the Commission.

Re-letter successive paragraphs to accommodate addition of new paragraph A above, as follows, and edit language to include recognition of a “meeting”:

Third paragraph changes from “B” to “C”. First line, remove “or RFD”.

Fourth paragraph changes from “C” to “D”. First and second line add “meeting or” twice prior to the two mentions of “hearing”.

Fifth paragraph changes from “D” to “E”. First and second line add “meeting or” twice prior to the two mentions of “hearing”. Seventh line add “meeting or” prior to “hearing”.

4. In **Section 240-7 Coordination with other boards**, delete the existing paragraph and replace with the following:

The Conservation Commission shall include in their Regulations the number and form of applications to be required by all applicants. Further, the Commission shall also provide in its regulations, that all applications are distributed to and coordinated with departments, boards, and officials which the Commission determines may have an interest in or be impacted by the proposed activity. The Commission shall consider any comments or recommendations such departments, boards, and officials may submit to the Commission. Any such comments or recommendations are deemed a public record and the applicant shall have the right to receive and respond to any such comments or recommendations.

5. In **Section 240-9 Permit determinations and conditions**, paragraph A, first line, insert “meeting or” prior to “hearing”.

Paragraph B, third line, insert a semicolon prior to the numbered list of conditions.

OBJECTIVES: To create an application process for a Request for Determination of Applicability (RFD) that is consistent with the requirements of the Massachusetts Wetlands Protection Act, MGL Chapter 131, Section 40; to correct some grammatical errors in the existing bylaw; and, to move the administrative process for coordinating with other town boards into the bylaw regulations so that it can be updated as needed.

SUMMARY: Currently, the bylaw requires a person filing a Request for Determination of Applicability (RFD) and all other permits (Notice of Intent, Abbreviated Notice of Intent, and Abbreviated Notice of Resource Area Delineation) to be subject to a Public Hearing, rather than a public meeting. The proposed amendments would change the requirement for a RFD to a public meeting and not require notification to abutters via certified mail, while the three other permits would remain subject to a Public Hearing and require notification to abutters via certified mail. This would make the requirements under the South Hadley Wetlands Bylaw, making the local requirements consistent with state law.

Currently, the section on coordination with other boards includes specifics on the number and format

for application submittals, and what departments and boards copies are to be submitted to. Administrative details such as these are more appropriate for the bylaw regulations, and can be updated as such by the Commission as needed without Town Meeting approval.

BACKGROUND: Under the Massachusetts Wetlands Protection Act, MGL Chapter 131, Section 40 and the regulations promulgated thereunder, 310 CMR 10.00, a RFD process is intended as an initial action to determine if the proposed work is in fact regulated under the Act. If it is found that the work will impact a Resource Area protected under the Act, then a Notice of Intent is required, hence the name “Request for Determination of Applicability”.

Currently, when filing an RFD, the applicant needs to complete WPA Form 3, send notice of the application and Public Hearing to all abutters via certified mail, submit and pay for a legal ad notice to be published in a newspaper of general circulation in South Hadley, submit the completed form to the Massachusetts DEP (in addition to the South Hadley Conservation Commission), pay a fee of \$50 to \$100 depending on the type of project, and attend the Public Hearing.

Through the proposed amendments, by changing the requirement from a Public Hearing to a public meeting, in the process described above, the applicant does not need to submit notice to abutters via certified mail. However, the public does still receive public notification via posting at Town Hall and in a newspaper of general circulation. The Commission also does not need to conduct a “hearing” but rather a “meeting” in compliance with the Open Meeting Law, MGL Chapter 39, Section 23B.

Currently, the bylaw includes information on the number and format for permit applications, and the boards and departments these documents need to be submitted to for comment. The number and format of applications (hard copy versus electronic) may change over time due to management and record keeping needs. These administrative decisions can be made by the Commission through the bylaw regulations as needed.

ANNOTATED BYLAW: If the Warrant Article is approved, the Wetlands Bylaw would be altered as annotated in the attached bylaw.

PUBLIC HEARING: A draft of the proposed changes were reviewed and discussed at a posted South Hadley Conservation Commission meeting on November 1, 2017. Subsequently, a Public Hearing about the proposed amendments was held on December 20, 2017. No members of the public attended the hearing.

RECOMMENDATION: The Conservation Commission at their December 20, 2017 meeting voted unanimously to recommend approval of this Article to make the corrections to the Wetlands Bylaw as submitted.