

Town of Berlin
Berlin Conservation Commission
23 Linden Street
Berlin, MA 01503

Wetlands Setback Policy

Unless proven otherwise by the applicant, the Conservation Commission (“ConComm”) shall presume that any proposed activity within 25 feet of any wetland will have a significant adverse impact on the wetland and should not be permitted.

Purpose of Policy

The ConComm has found that activity in the 100-foot buffer zone bordering wetland resource areas poses a serious threat to such areas, and activity within the first 25 feet from the wetland resource is the most impactful. These findings are from training provided by Massachusetts Association of Conservation Commissions (MACC), training provided by Massachusetts DEP, and from experience evaluating and issuing over a hundred and fifty Notice of Intent (NOIs), Determination of Applicability (DOAs), and Order of Conditions (OOCs). As a result, the ConComm strongly discourages such activity within 25 feet of wetland boundaries. This undisturbed zone will provide a minimum buffer to prevent negative impacts on wetlands.

Basis of Policy

Scientific research, and the ConComm’s own experience in reviewing a wide variety of projects, demonstrates that alteration or construction activities within the buffer zone consistently result in destructive effects on the wetlands themselves. These include, but are not limited to, disturbance of natural vegetation along the wetlands boundary, run-off of pollutants, fill material, and other substances into the wetlands, stockpiling or dumping of materials or debris which migrates over time into the wetlands, and disturbance of wildlife habitat, such as nesting sites and corridors which are important to wetland species. The ConComm has also noted a tendency on the part of many project proponents to design the project so that it goes to the absolute limit of the wetland boundary. Particularly given the difficulty which often arises in defining that boundary, in most instances it is vital to protect an adjacent section of the buffer zone and prevent the inevitable destructive impacts on the wetlands which arise from activity which goes to the boundary.

The Policy

As used herein:

“Alteration” shall mean any removal, addition, alteration, or disturbance of soil, vegetative cover, or other naturally occurring materials.

“Construction” shall mean the construction of any structure or building, including, without limitation, any residential or commercial building, garage, shed, barn, tennis court, deck, swimming pool, driveway, landscaping project or site preparation.

In acting upon Notices of Intent and Determinations of Applicability, the ConComm will presume that any Alteration or Construction within 25 feet of a wetland boundary would have a significant adverse impact on the wetlands, and such Alteration or Construction shall not be permitted unless the applicant demonstrates that (1) such activity would not have such an impact or (2) public benefits, such as health or safety, outweigh any such impact. The applicant shall have the burden of proof on this issue. Factors to be considered by the ConComm in determining whether the applicant has met this burden shall include, but are not limited to, the following:

1. Slope of the buffer zone
2. Type and structure of vegetation in the buffer zone
3. Degree and scale of past alterations in the buffer zone
4. Ecological integrity of the adjacent wetlands
5. Importance of the buffer zone to wildlife utilizing the wetland
6. Whether the proposed activity in the buffer zone would be permitted if it were in a wetland
7. Any ecological benefits arising from the proposed activity, such as removal of exotic vegetation or creation of enhanced wildlife habitat
8. Any public benefits arising from the proposed activity

Applicants wishing to rebut the presumption set forth in this policy shall provide the ConComm with the following information, together with any additional relevant information which the ConComm may require:

1. A cross-sectional profile of elevation changes in any area of the buffer zone within 25 feet of a wetland, which would be disturbed by the proposed activity
2. A list of a vascular plant species occurring in the 25-foot area of the buffer zone and adjacent wetland areas including data on relative abundance of each species (vascular is defined as having ducts for conveying sap; vascular plants are plants characterized by vascular tissue, like veins, arteries, duct like features; also means the phanerogamous division of plants – i.e. those plants having visible flowers, containing stamens and pistils)
3. A wildlife habitat evaluation of the 25-foot area of the buffer zone and adjacent wetlands including data on observed wildlife utilization of such area, such as breeding bird use, occurrence of fish, reptiles, amphibians and mammals
4. A description of the nature of any public or ecological benefits which may arise from the proposed activities

It is the ConComm's policy, where it has discretion, to prohibit any activity in the wetlands except where there are exceptional circumstances, where no other practical alternative exists, and where satisfactory replication takes place prior to any Alteration or Construction. Activity within the 100-foot buffer zone, but not within the 25-foot area, will continue to be reviewed on an individual case basis.

Adopted by unanimous vote of all 7 members of the Berlin Conservation Commission on 4 April 2007.