

1 The Conservation Commission has been requested to provide a summary of our jurisdiction and
2 responsibilities with regard to potential redevelopment within the downtown area. There is
3 currently no specific redevelopment plan before the Commission, which was asked to be
4 reviewed, and no action is being taken by the Commission in regard to any potential project. An
5 Order of Resource Delineation (ORAD) was issued in 2020 for the property of 10-50 Main Street
6 located in downtown which verified and established wetland jurisdictional areas on that
7 property.

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9 Below is a summary of resource areas found in downtown Ashland and the regulatory
10 provisions of the Massachusetts Wetlands Protection Act (WPA) and the Ashland Wetlands
11 Protection Bylaw.

12
13 Downtown Ashland includes, but is not limited to the following resource areas:

- 14 • Bank (Intermittent Stream Channel and Sudbury River)
- 15 • Land under Water Bodies and Waterways (LUWW)
- 16 • Bordering Land Subject to Flooding (FEMA Flood Zone AE)
- 17 • Riverfront Area (exemption applies)
- 18 • 100' buffer zone and 25' No-Disturb Zone

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21 **Bank (310 CMR 10.54)**

22 The Sudbury River is within downtown Ashland and the resource area “Bank” contains the
23 waterway. Any removal, filling, dredging, or alteration of Bank requires a permit from the
24 Conservation Commission. Any work approved cannot impair the following per 310 CMR 10.54
25 (4):

- 26 1. *the physical stability of the Bank;*
- 27 2. *the water carrying capacity of the existing channel within the Bank;*
- 28 3. *ground water and surface water quality;*
- 29 4. *the capacity of the Bank to provide breeding habitat, escape cover and food for*
30 *fisheries; and*
- 31 5. *the capacity of the Bank to provide important wildlife habitat functions. **

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33 *Work that is for a project or projects on a *single lot* with a Notice of Intent filed that alter(s) up
34 to a cumulative 10% or 50 feet (whichever is less) of the length of the Bank found to be
35 significant to the protection of wildlife habitat, shall not be deemed to impair its capacity to
36 provide important wildlife habitat functions. *Additional alterations beyond the above threshold*
37 *may be permitted if they will have no adverse effects on wildlife habitat, as determined by*
38 *procedures contained in 310 CMR 10.60.*

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40 For the purposes of the Wetlands Protection Act, “*Wildlife habitat*” is specifically defined, and
41 only refers to area subject to M.G.L. c. 131, § 40, which is summarized as jurisdictional area
42 which due to its characteristic provide *important food, shelter, migratory or overwintering*
43 *areas, or breeding areas for wildlife.* With the exception for Estimated Habitats of Rare Wildlife,

44 presence of wildlife alone does not necessarily mean the area meets the definition of “Wildlife
45 Habitat”.

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47 Permissible activities within the Bank per 310 CMR 10.54 (4)(b) include but may not be limited
48 to the construction of structures required to prevent flood damage to facilities, buildings, and
49 roads which were constructed prior to April 1, 1983. This includes the renovation or
50 reconstruction of the above listed so long as *the proposed structure, renovation, or*
51 *reconstruction is designed and constructed using best practical measures... to minimize adverse*
52 *effects in the resource area... [and] the applicant demonstrated that there is no reasonable*
53 *method of protecting, renovating, or rebuilding the facility in question other than the one*
54 *proposed.* Bank is provided a 100’ buffer zone under the Local Wetlands Bylaw only and is given
55 the benefit of the 25’ no disturb zone as part of the Bylaw.

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58 **Land Under Waterbodies and Waterways (310 CMR 10.56)**

59 The River or Waterway contained by the Bank is regulated as Land Under Water Bodies and
60 Waterways (LUWW). Any work that involves removing, filling, dredging, or altering LUWW
61 cannot impair the following per 310 CMR 10.56 (2)

- 62 1. *the water carrying capacity of the existing channel within the Bank;*
- 63 2. *ground water and surface water quality;*
- 64 3. *the capacity of the Bank to provide breeding habitat, escape cover and food for*
65 *fisheries; and*
- 66 4. *the capacity of the Bank to provide important wildlife habitat functions.**

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68 *In addition to the same threshold as defined for Bank in regards to important wildlife habitat
69 functions, stream crossings are presumed to meet this performance standard *provided the work*
70 *is performed in compliance with the Massachusetts Stream Crossing Standards.* Additionally,
71 the installation of such a stream crossing may be exempt from the requirement to perform a
72 habitat evaluation.

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75 **Bordering Land Subject to Flooding (310 CMR 10.57)**

76 Work within BLSF requires compensatory flood storage must be provided for any and all flood
77 storage volume lost as a result of a project, *if the issuing authority determines “said loss will*
78 *cause an increase or will contribute incrementally to an increase in horizontal extent and level of*
79 *flood waters during peak flows”* per 310 CMR 10.57(4)(a).

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82 **Riverfront Area (310 CMR 10.58)**

83 It is noted that while Riverfront Area is typically defined as 200 feet, an exemption to this
84 applies for “Historic Mill Complexes” under the Wetlands Protection Act. Per 310 CMR 10.04,
85 Historic Mill Complexes are defined as existing “prior to 1946 and situated landward of the
86 waterside facade of a retaining wall, building, sluiceway, or other structure existing on August
87 7, 1996” or which is a historic mill included on the *Massachusetts Register of Historic Places.* It

88 is noted that the property of 10-50 Main St. is listed on the State GIS as being registered with
89 the MassHistoric Commission and would be subject to this exemption. Additionally, this
90 exception applies only to the footprint or foundation of the related buildings which were
91 constructed before and existing after 1946. Per 310 CMR 10.58(6), activities within an Historic
92 Mill Complex are exempt from requirements for Riverfront Area; however, nothing is stated
93 that would exempt the project from the 100' buffer zone, and work *may* still be subject to said
94 buffer. The local Wetlands Bylaw, does not include such specifications, and it is unclear if the
95 Historic Mill Complex exception would be valid under it or not.

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98 **100-foot Buffer Zone and 12-foot No Disturb Zone (310 CMR 10.02 2(b) and Town Code**
99 **Section 348)**

100 Work within 100-foot buffer zone will require a permit from the Conservation Commission. No
101 work may take place within the 25' no-disturb zone which applies only to wetlands, bank, and
102 waterbodies, with the following exemption per the Ashland Town Code § 348-3 (B)(3)(a)(3):

- 103 1. Crossings *may* be allowed by waiver *when no other practicable alternative exists*. In such
104 cases the request must be included as part of a Notice of Intent and must provide
105 information and evidence *deemed satisfactory by the Commission* that the work
106 sufficiently protects and enhances wetland interests.

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108 Permits for minor work, may be in the form of a Request for Determination of Applicability
109 (RDA) which is discussed at a public meeting that requires a legal ad be posted, but does not
110 require direct abutter notifications. The Determination issued would be an Determination of
111 Applicability (DOA). A DOA can be either positive or negative with sub categories for each. A
112 positive determination by the Commission requires the filing of a Notice of Intent (NOI) or
113 Abbreviated Notice of Resource Delineation (ANRAD). An RDA is typically filed for one of six
114 specific purposes:

- 115 1. Determine whether an *area* is subject to the Wetlands Protection Act
116 2. Determine whether an *area* is subject to the Local Wetlands Bylaw
117 3. Determine whether *boundaries* shown on a plan or map are accurate*
118 4. Determine whether *work* is subject to the Wetlands Protection Act
119 5. Determine whether *work* is subject to the Local Wetlands Bylaw
120 6. Determine if a provided *scope of alternatives* is adequate for work within Riverfront
121 Area

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123 *For large properties with complex wetlands systems, typically an ANRAD is filed rather than an
124 RDA to have the Commission officially approve the wetland delineation and verify the regulated
125 resources on the subject site.

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127 The responding DOA if negative states that no further action is required under the Wetlands
128 Protection Act or Local Wetlands Bylaw, but *may* include additional conditions on the work. The
129 most common negative determination is negative 3, which states that the work described is
130 within the buffer zone, but will not significantly alter the adjacent resource area. A DOA is valid

131 for 3 years and cannot be amended or extended. With the exemption of purpose #6 listed
132 above, RDAs are typically only filed for work within buffer zone.

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134 For extensive work within any area jurisdictional to the Conservation Commission an NOI is
135 typically filed. NOIs require the Commission hold a public hearing which requires a legal ad *and*
136 direct abutter notifications. The outcome of an NOI hearing is either an approval or denial.
137 Approved projects receive an Order of Conditions (OOC). The Commission can implement
138 special conditions as part of the Order to protect the interests of the Wetlands Protection Act
139 and Local Wetlands Bylaw. When construction of the project is completed the *applicant* is
140 responsible for submitting a Request for Certificate of Compliance (COC Request) to close the
141 Order. If the Commission finds the work was done to Order, a COC is issued. An Order of
142 Conditions is valid for 3 years, *but can be extended or amended at the request of the applicant.*

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145 **Stormwater (310 CMR 10.05, Ashland Town Code Chapter 247)**

146 In addition to the above wetlands protections, management of stormwater may apply both
147 from the state and from the local bylaw.

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149 Per the State Stormwater Standards, a Notice of Intent requires a Stormwater Management
150 Plan to be submitted, *unless* it falls under one of the following exceptions:

- 151 • single-family house
- 152 • emergency road repair
- 153 • small residential subdivision less than or equal to 4 single-family houses, or less than or
154 equal to 4 units in multifamily housing project *with no discharge to Critical Areas*

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156 Under the local Stormwater Management Bylaw an SMP must be applied for if any one of the
157 following conditions are met:

- 158 • Any activity subject to Site Plan Review*
- 159 • Any activity that will result in soil disturbance greater than 10,000ft² or more than 50%
160 of the parcel/lot, whichever is less
- 161 • Any residential development or redevelopment of more than five acres proposed under
162 “the Subdivision Control Law” or under a special permit process pursuant to G.L. Ch. 40A
163 Section 9
- 164 • Any activity that will increase the amount of impervious surfaces more than 50% of the
165 area of a parcel or lot
- 166 • Any activity that will disturb land with 15% or greater slope and where the disturbance
167 is greater than or equal to 5,000ft² within the sloped area
- 168 • Any activity that will alter, fill, or degrade a wetland, body of water, floodplain, or
169 isolated depression subject to flooding.

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171 *It is noted that the Commission has set precedent during the January 24th, 2022 meeting, for
172 projects that only require an SMP due to Site Plan Review AND there is no increase to
173 impervious cover or water flow, a waiver may be requested from the Stormwater Bylaw.