



## TOWN of WILMINGTON

DEPARTMENT OF PLANNING & CONSERVATION

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### WILMINGTON CONSERVATION COMMISSION TREE AND VEGETATION REMOVAL POLICY

Approved September 4, 2019

#### Introduction

Under the Massachusetts Wetlands Protection Act (the "WPA") and the Town of Wilmington Wetlands Enforcement Bylaw (the "Bylaw"), the Wilmington Conservation Commission (the "Commission") must approve disturbance or removal of vegetation within wetland resource areas and within 100 feet of certain wetland resource areas, unless the activity is specifically exempt. These are called areas subject to jurisdiction. Wetland resource areas include most streams, brooks, creeks, rivers, ponds, lakes, and wetlands, as well as the area within 200 feet of a perennial river (Riverfront Area), and Land Subject to Flooding. The purpose of this policy is to provide applicants with guidance and procedures for proposed tree and vegetation removal within these protected wetland resource areas subject to Commission jurisdiction under the WPA and Bylaw.

**Wetland resource areas may be dry much of the year and difficult to identify. Please contact the Conservation Agent at 978-658-8238 for assistance with identifying wetland resource areas before you conduct work on your property.**

#### Definitions

Active use areas: Legally existing areas actively used for public or private uses including legally established access to those areas. An actively used area is currently in a condition maintained for the existing legal use, but does not include naturally vegetated areas. Active use areas include but are not limited to structures, lawns, landscaped and hardscaped areas, driveways and access ways, parking lots, and utilities and associated rights-of-way.

Immediate safety hazard: An imminent threat to human safety or valuable property

Current safety hazard: A potential and likely threat to human safety or property within an active use area in the foreseeable future, which includes but is not limited to:

- Significant lean over or toward an active use area
- Evidence of disease, rot, or insect damage
- Evidence of damage to an active use area from recent limb fall

Fall Radius: The distance a tree could fall in any direction as determined by its height

Tree: Woody plants three (3) inches or more in diameter regardless of height

Shrub: Woody plants less than three (3) inches in diameter and at least three (3) feet tall

Standing Snag: A standing dead tree at least ten (10) feet in height

Substantially Interferes: Obstructing the use of an active use area such that the area is rendered useless for the purposes in which it was lawfully created

Downed Woody Debris: A dead tree or other dead woody vegetation that has fallen to the ground in a naturally vegetated area

## **Functions and Values**

Trees and other vegetation in and around wetland resource areas provide significant ecological functions in Wilmington. Removing trees and vegetation can reduce the ability of the landscape to perform these important functions.

Root systems stabilize soils which prevent erosion into wetlands and waters, and maintain soil structure. As plants absorb water and air, they filter nutrients, pollutants, and greenhouse gases such as dust, toxins, bacteria, and carbon dioxide. A single tree can absorb thousands of gallons of water in a growing season, which helps regulate water levels. During flood events, the water retained in vegetation reduces flooding, and the vegetation itself acts as a barrier to slow and disperse flood waters. This reduces downstream flooding and property damage.

Shade from vegetation helps to regulate air, soil, and water temperature. Lower air temperatures require less energy to cool buildings in summer and certain species require cool water to survive. Leaves shield areas during storm events, preventing and minimizing storm damage. When vegetation falls to the ground, they produce rich organic soils as they decompose. Living and dead trees and other vegetation provide important habitat for a variety of plants and animals.

## **Emergency Tree and Vegetation Removal**

If a tree or other vegetation poses an immediate safety hazard within the fall radius of an active use area because of a recent change in its condition (for example, recent storm damage), the property owner or applicant may request an Emergency Certification pursuant to the WPA and its Regulations. The Conservation Agent may issue an Emergency Certification following a site visit and confirmation the situation constitutes an emergency. An Emergency Certification is valid for 30 days and only approves the work required to alleviate the immediate safety hazard as outlined in the Certification.

## **Procedure to Request Administrative Approval for Tree and Shrub Removal (Non-Emergency)**

Trees and shrubs may be administratively approved for removal as described below only if they constitute a current safety hazard within the fall radius of an active use area and/or encroachment that substantially interferes with an existing legal active use area. This policy applies to live and dead vegetation, including standing snags and downed woody debris. It does not apply to tree and vegetation removal associated with new construction or the expansion of active use areas, or violations.

### Conservation Agent or Director of Planning & Conservation Administrative Approval

An application may be submitted to the Department of Planning & Conservation for administrative approval of:

- Up to three (3) trees or six (6) shrubs in upland areas of Land Subject to Flooding and Riverfront Area
- Up to five (5) trees or ten (10) shrubs in the 100-foot buffer zone

### Conservation Commission Administrative Approval

An application may be submitted to the Conservation Commission for administrative approval (at a public meeting) for the removal of:

- Four (4) to five (5) trees or seven (7) to ten (10) shrubs in upland areas of Land Subject to Flooding and Riverfront Area
- Six (6) to ten (10) trees or eleven (11) to twenty (20) shrubs in the 100-foot buffer zone

For every tree approved for removal, the number of shrubs that can be approved for removal is reduced by two (2). For every two (2) shrubs approved for removal, the number of trees that can be approved for removal is reduced by one (1). The table below identifies the ratios of trees and shrubs that may be administratively removed per the scenarios outlined above.

Trees	10	9	8	7	6	5	4	3	2	1	0
Shrubs	0	2	4	6	8	10	12	14	16	18	20

### **Procedure to Request Formal Approval for Tree and Shrub Removal (RDA or NOI)**

Removal of trees and other vegetation in all other wetland resource areas, 15-foot no disturb setbacks established through a recorded Order of Conditions, Conservation Land, Conservation Restrictions, and removal of more trees or shrubs than permitted through the administrative approval process require formal approval from the Commission. Applicants may submit a Request for Determination of Applicability (RDA) or Notice of Intent (NOI) to the Commission. Healthy trees that do not pose a current safety hazard and/or are not substantially interfering with use of the property also require formal approval to be removed. Stumps may be removed only within upland areas. With the exception of hand tools, equipment required to remove trees and vegetation must be staged only in upland areas.

### **Certified Arborist Assessment Requirement**

A certified arborist assessment is required for trees claimed to be a safety hazard because of disease, rot, insect damage, etc. that isn't readily apparent. A certified arborist assessment may be required for administrative and formal approvals. The assessment must discuss the health of the roots, trunk, and canopy, and hazard potential including the likelihood of failure and impacting an active use area. The Commission reserves the right to require a certified arborist assessment at its discretion where the circumstances warrant such assessment.

### **Tree and Shrub Replacement**

To replace functions lost due to the removal of trees and shrubs in areas subject to jurisdiction, the following are guidelines typically applied to tree and shrub replacement.

Removal of the following vegetation typically does not require replacement:

- Trees less than ten (10) inches in diameter, shrubs less than three (3) feet in height, and trees at least ten (10) inches in diameter that are cut at least ten (10) feet above the ground to become a standing snag
- Existing standing snags and downed woody debris

### Single-Family Properties

Within upland areas of Land Subject to Flooding and Riverfront Area, and the first 50 feet of the 100-foot buffer zone, replacement shall occur as follows:

- One (1) tree for every three (3) trees ten (10) inches or greater removed (same ratio for shrubs)
- One (1) tree for every two (2) trees twenty-four (24) inches or greater removed

Within the outer 50 feet of the 100-foot buffer zone:

- One (1) tree for every four (4) trees ten (10) inches or greater removed (same ratio for shrubs)
- One (1) tree for every three (3) trees twenty-four (24) inches or greater removed

### All Other Properties

Unless otherwise constrained by site limitations, the same replacement ratios for single-family properties apply to all other properties including but not limited to commercial, industrial, municipal, and multi-family residential properties. Should site constraints prevent adherence to the ratios, details of the constraints and an analysis of measures to avoid and minimize tree and shrub removal in areas subject to jurisdiction should be provided.

The analysis should include a narrative and a project plan identifying the location, species, and diameter of trees proposed for removal relative to wetland resource areas, the 100-foot buffer zone, proposed activities, and the limit of work. The plan should also include enough information for the Commission to determine if there are other potential locations for tree and shrub replacement on the property within areas subject to jurisdiction. Projects are typically expected to replace no less than 25 percent of the trees and shrubs removed.

Replacement trees and shrubs incorporated into landscapes and hardscapes may be acceptable. A description of how the trees and shrubs are suitable for the anticipated use, location, and maintenance of the area should be provided. For example, hard mast species such as oak, hickory, and beech may not be appropriate adjacent to parking areas because of falling acorns and nuts. Certain species may also not be tolerant of periodic salt from snow plowing. Considerations like these may reduce the need for replacement and desire to remove the trees or shrubs in the future.

Conservation Subdivisions as defined in Section 8 of the Wilmington Zoning Bylaw are not subject to this policy because of the open space requirements which inherently impose limits on clearing vegetation.

### Replacement Requirements

Native deciduous species are generally required to be replaced in kind. Native evergreen species may be approved for replacement on a case-by-case basis, but should generally consist of no more than half the trees required to be replaced. Trees should be at least one (1) inch caliper, shrubs should be at least one (1) gallon, and they are required to be installed within six (6) months of approval. They should be planted as close or closer to the resource area as the tree or shrub removed. Replacement species should be selected from the Recommended Native Tree and Shrub List, which can be provided upon request.

Trees and shrubs shall survive for two (2) growing seasons, and must be installed by May 31 for the current growing season to count. This can be extended due to seasonal conditions at the discretion of

the Conservation Agent or the Conservation Commission. Proof of installation shall be provided within six (6) months of approval.

### **Burden of Proof**

The burden of proof to demonstrate compliance with all requirements of the WPA and the Tree and Vegetation Removal Policy is upon the property owner. During the non-emergency approval process, in the event of a difference of opinion as to the health or hazard potential of a tree, a certified arborist assessment and/or a formal application will be required. Where, in the opinion of the Commission, the particular circumstances warrant approval beyond the requirements set forth above, the Commission has the authority to require the filing of a RDA or a NOI or require the filing of a certified arborist assessment. An appeal of a decision under this policy may be taken through an action in the nature of certiorari, pursuant to G.L. c. 249, §4.