

Hamilton Conservation Bylaw

2022 Proposed Revision



What is a local Conservation Bylaw

A municipal law, administered by the Conservation Commission, that provides extra protections beyond those in the Wetlands Protection Act (WPA) to wetlands resources within the municipality.

Local Conservation Bylaws must be more restrictive than the WPA in at least one way. For example, Bylaws may:

- Protect wetlands to a *greater degree*,
- Recognize and protect *resource areas beyond those covered by the Act, and/or additional wetland values*, recognized by the Town as significant.

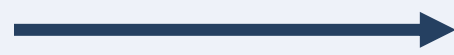
Why revise our bylaw?

- 1 Recommended by Hamilton Town Counsel
- 2 Improve clarity and shorten the review process
- 3 Update to reflect latest scientific research
- 4 Clarify & strengthen buffer zone protections
- 5 Differentiate how projects on developed vs undeveloped land are regulated
- 6 Current bylaw is 16 years old (2006); Revision in process for >1.5 years

1 Town Counsel recommendations

Ensure all regulations have direct links in the Bylaw

Bylaw
What to protect



Regulations
How to protect it

CHAPTER XVII CONSERVATION

APPLICATION: THE PURPOSE OF THIS BY-LAW IS TO PROTECT THE WETLANDS AND FLOODPLAINS OF THE TOWN OF HAMILTON BY CONTROLLING ACTIVITIES DEEMED TO HAVE SIGNIFICANT EFFECT UPON WETLAND VALUES INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING: PUBLIC OR PRIVATE WATER SUPPLY, GROUNDWATER, FLOOD CONTROL, SOIL EROSION CONTROL, STORM DAMAGE PREVENTION, WATER POLLUTION, FISHERIES, WILDLIFE, RECREATION AND AESTHETICS (COLLECTIVELY, THE "VALUES PROTECTED BY THIS BY-LAW").

REQUEST FOR WRITTEN DETERMINATION OF APPLICABILITY: WITHIN TWENTY ONE DAYS AFTER RECEIPT OF A WRITTEN REQUEST, THE COMMISSION SHALL MAKE A WRITTEN DETERMINATION WHETHER THIS BY-LAW IS APPLICABLE TO ANY LAND OR WORK THEREON. WHEN THE PERSON REQUESTING A DETERMINATION IS OTHER THAN THE OWNER, NOTICE OF THE DETERMINATION SHALL BE SENT TO THE OWNER AS WELL AS TO THE REQUESTING PERSON.

No person shall remove, fill, dredge, alter or build upon or within one hundred feet of any bank, fresh water wetland, flat, beach, marsh, meadow, bog, swamp, or lands bordering on any estuary, creek, river, stream, pond or lake, or any land under said water or any land subject to storm flowage, flooding, inundation, or within one hundred feet of the one hundred year storm line, other than in the course of maintaining, repairing or replacing, but not substantially changing or enlarging, an existing or lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph, and other telecommunication services without filing written notice of intent to so remove, fill, dredge, alter or build, including such plans as may be necessary to describe such proposed activity and its effect on the environment and without having received and complied with conditions issued pursuant to this by-law.

Such notice shall be sent by certified mail to the Hamilton Conservation Commission (the "Commission"). Fees, to defray costs and expenses of reviewing submissions, shall be set by regulation of the Commission pursuant to this By-law. Plans included should conform to applicable regulations of the Department of Environmental Protection, and to such regulations as may be promulgated by the Commission. No such notice shall be sent before all permits, variances and approvals required by local by-law with respect to the proposed activity which are obtainable at the time of such notice have been obtained. Copies of such notice of intent shall be sent at the time of filing by certified mail to the Hamilton Board of Selectmen and Hamilton Planning Board and the Hamilton Board of Health.

Hearings: The Commission shall hold a public hearing on the Notice of Intent within twenty-one days or receipt of the completed filing. Notice of the time and place of the

Town of Hamilton Conservation Bylaw Regulations

I. GENERAL PROVISIONS

A. Authority

These Regulations are promulgated under authority of the Massachusetts Constitution Amendment Article XXVII (Article 97), Massachusetts General Laws c.40 §8C, the Home Rule Amendment Article LXXXIX (89), of the amendments of the Constitution of Massachusetts, 1966 as amended from time to time, and in accordance with the Hamilton Conservation Bylaw and shall be effective upon fulfillment of all legal requirements for their effectiveness.

B. Purpose

The purpose of the Hamilton Conservation Bylaw (hereafter referred to as the "Bylaw") is clearly stated in the Bylaw. Wetlands contribute to a number of public interests such as the prevention of pollution of surface water and groundwater, private and public water supply, wildlife habitat, protection of fisheries, and stormwater damage prevention, and are therefore protected by the Bylaw. The Bylaw identifies additional public interests not recognized by the Wetlands Protection Act. These are: "prevention of erosion and sedimentation", "wildlife" "recreation" and "aesthetics". Any permit issued under the Bylaw and Regulations must therefore contribute to, and not be violative of, these public interests. These Regulations are promulgated to ensure fairness, to create a uniformity of process and to clarify and define the provisions of the Bylaw, administered by the Hamilton Conservation Commission, hereafter called the "Commission".

C. Jurisdiction

The areas subject to protection under the Bylaw differ from those protected by the Act in that additional areas are protected by this Bylaw. The additional areas subject to protection under the Bylaw include smaller ponds, vernal pools and certain freshwater wetlands that may not meet the definition of bordering vegetated wetland under the Act and including Associated Upland Resource Areas (AURA's) as defined below.

1. Vernal pools

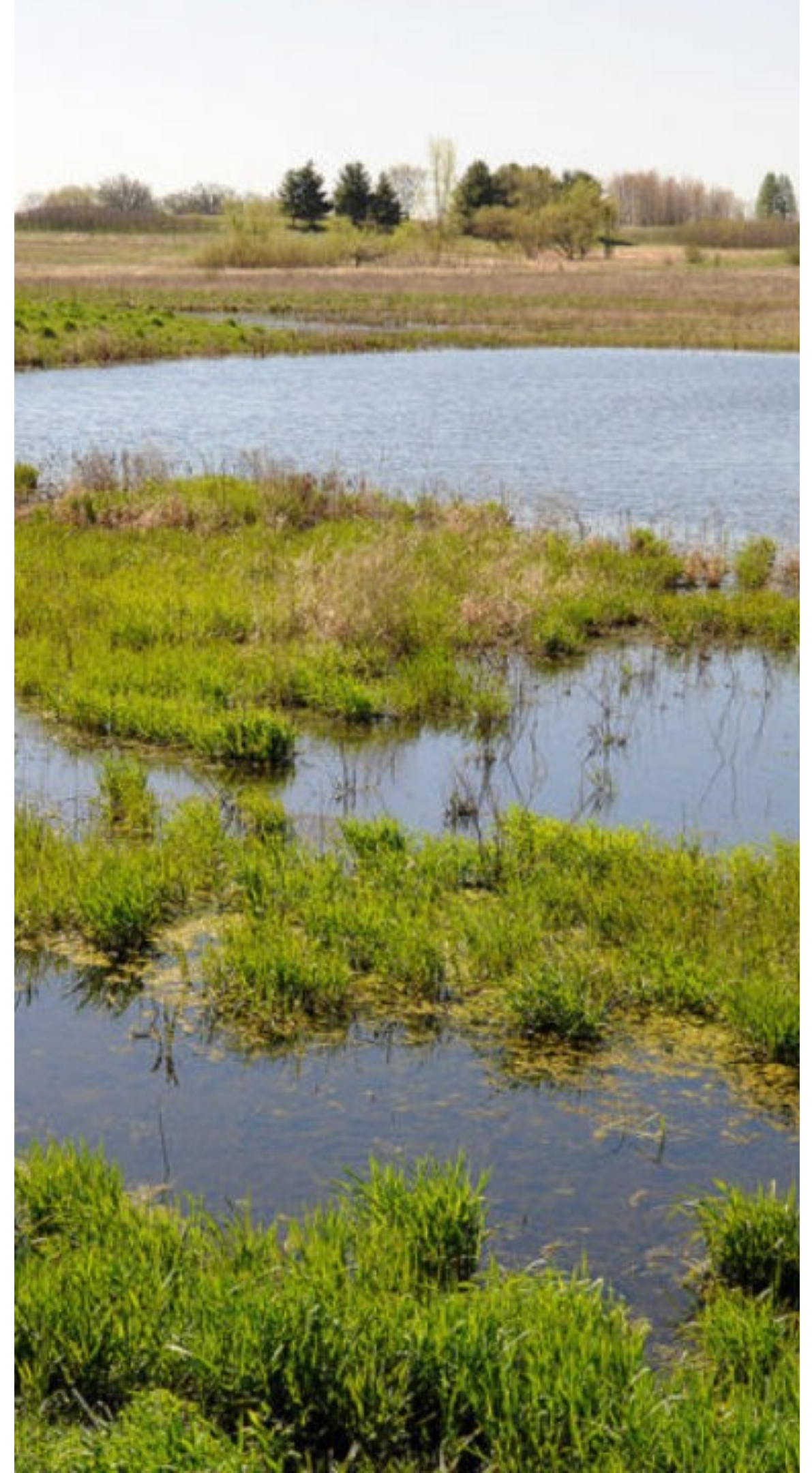
Such areas are presumed to be significant to the 'wildlife' and 'wildlife habitat' interests of the Bylaw. This presumption of significance can exist in the absence of Certification by the MA Division of Fisheries and Wildlife and whether or not the vernal pool is located outside wetlands. The surrounding vegetation and trees are vital to a vernal pool, with the canopy and other plant life eventually providing the dead leaves that spark the energy transfer in the food chain. Bacteria and other organisms feed on the detritus and decomposing organisms add important nutrients to the water. Studies have shown that removal of vegetation or disturbance of these areas, which range from 750 to 1,200 feet from the vernal pool, can wipe out the vernal pool populations. The Commission's jurisdiction is limited to the 100 foot AURA surrounding vernal pools. Such areas can be regulated by the Bylaw since these areas protect the public interests identified in the Bylaw. See Section II Definitions for more detail.

2. Freshwater Wetland

Certain land may not meet the definition of a bordering vegetated wetland under the Act but still provide identified, important wetland functions and values. Such areas are significant to all of the interests of the Bylaw. Such areas are regulated by the Bylaw since these areas protect the public interests identified in the Bylaw. See Section II Definitions for more detail.

3. Associated Upland Resource Area

The Associated Upland Resource Area ("AURA" hereafter) means that area of land extending 100 feet horizontally outward from the boundary of any area specified in these Regulations in Article I or Article II.



1 Town Counsel recommendations

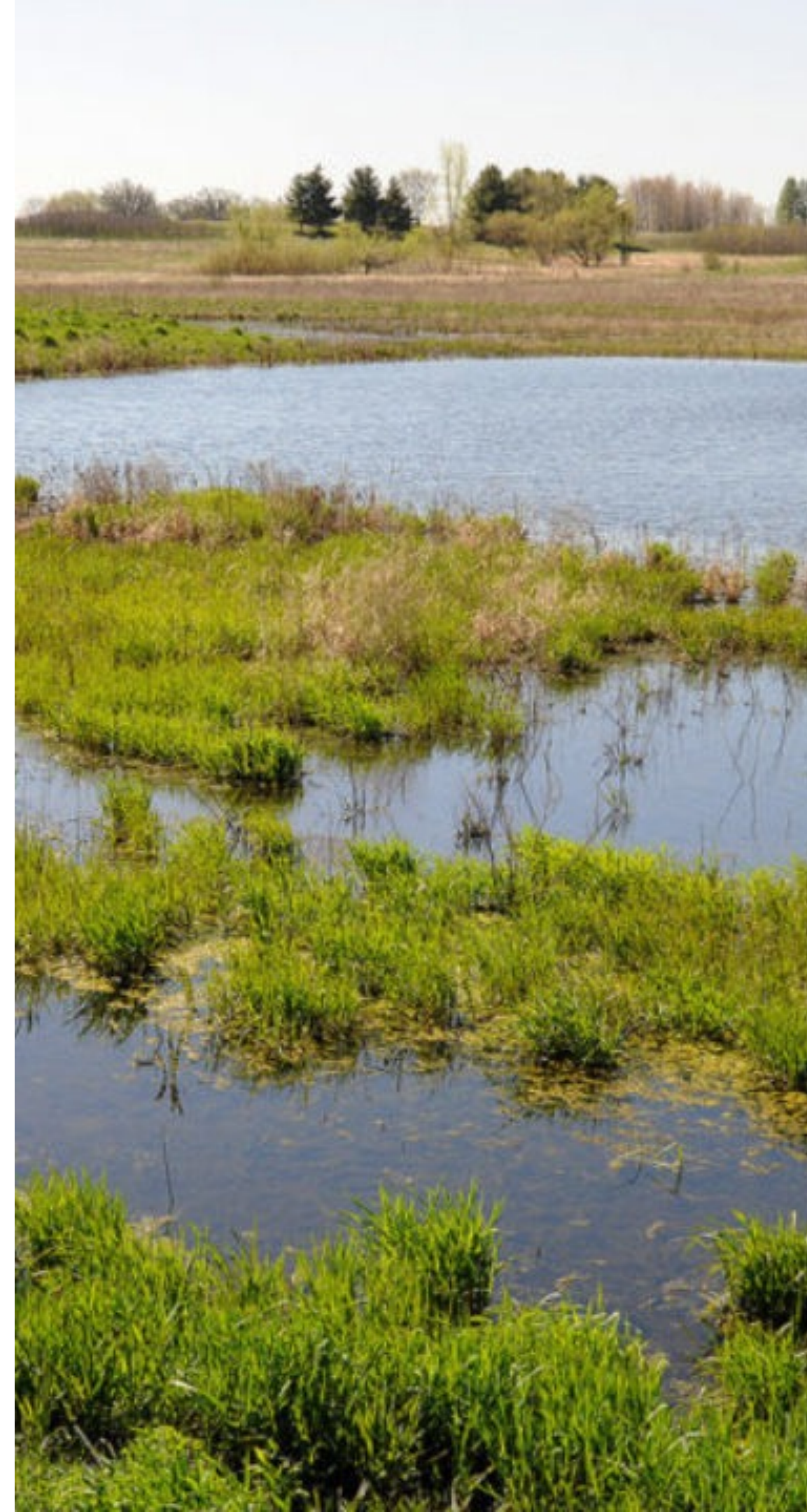
Ensure all regulations have direct links in the Bylaw

Example:

Current bylaw: Does not define areas subject to additional protection (beyond WPA) mentioned in the Regulations (e.g. "AURA"), posing issues with Bylaw implementation.

Revised bylaw: Clarifies definitions/scope of all resource areas (including new "Regulated Buffer") in bylaw itself:

- Section 2: Definitions: "Resource Area" and "Regulated Buffer"





2 Improve clarity and shorten the review process

Align with MACC model bylaw to make the bylaw easier to use and regulate

Example:

Current bylaw: Not fully aligned with MACC Model Bylaw, not user-friendly, missing key references (as per 1 & 3)

Revised bylaw: Expanded Definitions (Sec. 2), Clarifies Jurisdiction (Sec. 3), Exemptions and Exceptions (Sec. 4), Appeals (Sec 12), Severability (Sec 15); Clearer sections enhance user-friendliness

Current Bylaw

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Revised Bylaw

MACC Non-Zoning Wetlands Protection Bylaw/Ordinance

Approved by MACC in 2006 for Inclusion in the 9th Edition of the MACC Environmental Handbook for Massachusetts Conservation Commissioners

This model non-zoning wetlands bylaw/ordinance is prepared by the Massachusetts Association of Conservation Commissions and updated as needed to reflect changes in wetlands law, science and policy. The model was substantially revised in 2006. It should be read in conjunction with Chapter 15 of the 2006 edition of the MACC Environmental Handbook for Massachusetts Conservation Commissioners. Chapter 15 includes a sample town meeting warrant article for adoption of the model. For simplicity the word "bylaw" is generally used to denote either a bylaw or ordinance. With appropriate terminology changes, this model can be adapted for a city. It is important to consult the internal notes, but they should not be part of or referenced in the bylaw.

WETLANDS PROTECTION BYLAW/ORDINANCE

I. Purpose

II. Jurisdiction

III. Exemptions and Exceptions

IV. Applications and Fees

V. Notice and Hearings

VI. Coordination with Other Boards

VII. Permits and Conditions

VIII. Regulations

IX. Definitions

X. Security

XI. Enforcement

XII. Burden of Proof

XIII. Appeals

XIV. Relation to the Wetlands Protection Act

XV. Severability

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3 Update to reflect latest scientific research

The WPA was designed by lawyers and for lawyers. We want our decisions to be based on sound science as well.

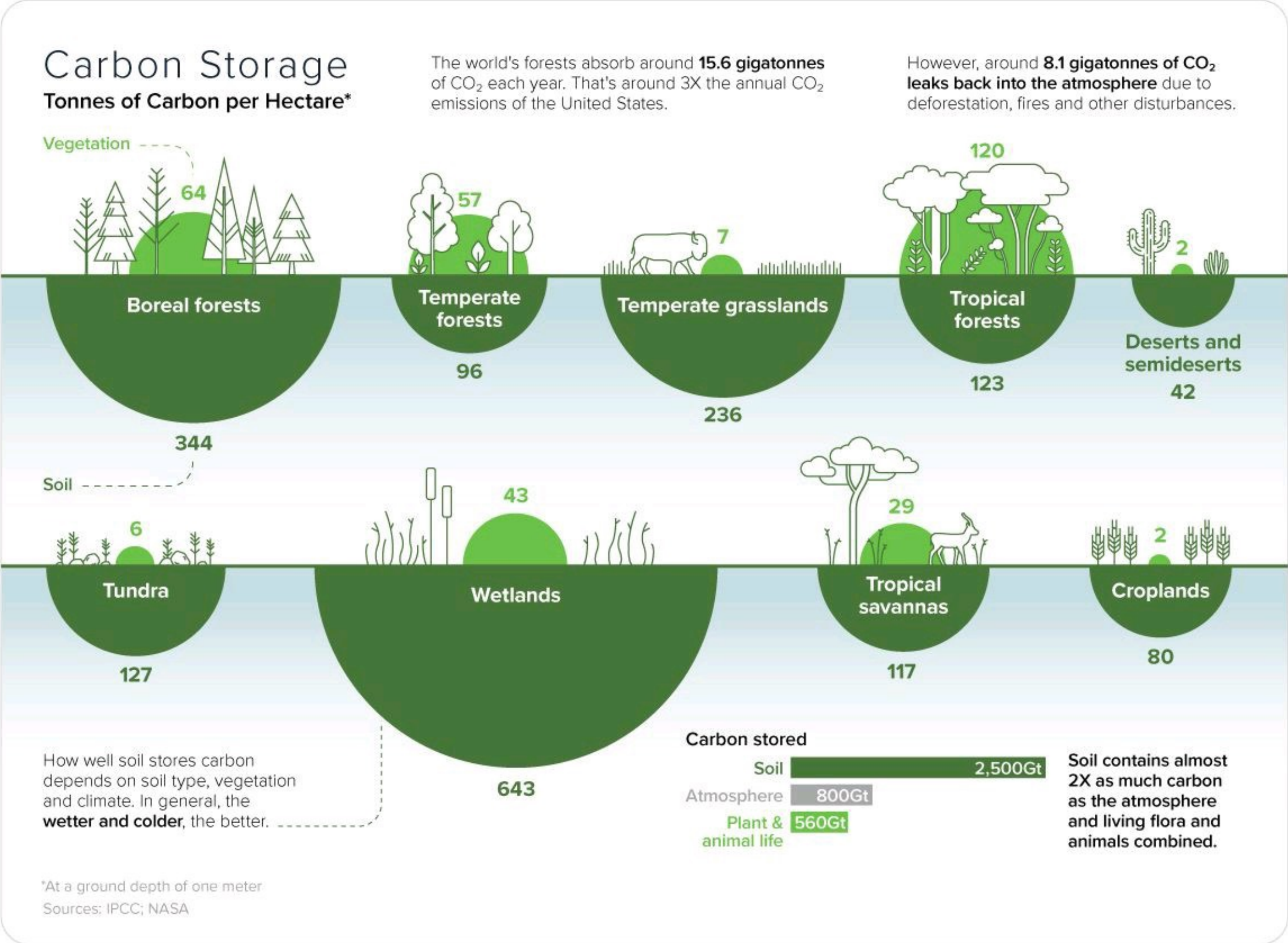
Example:

Revised bylaw:

- Recognizes additional resource area values (Sec. 1) including: aquifer recharge/discharge, carbon sequestration, ecosystem services e.g. air and water filtration, wildlife habitat & rare species, and agriculture.
- Considers climate change impacts during project evaluation process (Sec 7 (A:3))



Why carbon storage is a wetlands-related resource area value





4 Clarify & strengthen buffer zone protections

“AURA” revised to “Regulated Buffer” for clarity

Example:

Current bylaw: No definition of “AURA”, thus unclear how to regulate.

Revised bylaw: Buffer definitions revised and simplified; addition of resource area values (3) translates to addition of new resource areas (buffers “upgraded”)

- Section 3: Jurisdiction
- Section 7 (C): Activities within the Regulated Buffer

Regulated Buffer: The regulated buffer is a *resource area* that includes:

- **The 100 ft. Wetlands Regulated Buffer** – extends 100 feet horizontally outward from the boundary of any freshwater wetland, isolated wetland, marsh, wet meadow, spring, bog or swamp; any bank; any land under water bodies or waterways; any reservoir, lake or ponds of any size; any land subject to inundation by groundwater; any land subject to flooding
- **The 200 ft. Vernal Pool Regulated Buffer** – extends 200 feet horizontally outward from the boundary of any Vernal Pool, and
- **The 200 ft. Riverfront Regulated Buffer** – extends 200 feet horizontally outward from the boundary of any river, intermittent or perennial stream, brook, or creek.

*Note: All of the above buffer areas (100, 200 and 200 feet respectively) refer directly to existing definitions in the WPA. The key difference proposed in the revised Hamilton Conservation Bylaw is in **defining these areas as resource areas in their own right** (not solely as buffers to other resource areas) given the **unique resource area values they provide** (e.g. carbon sequestration, habitat, etc.)*

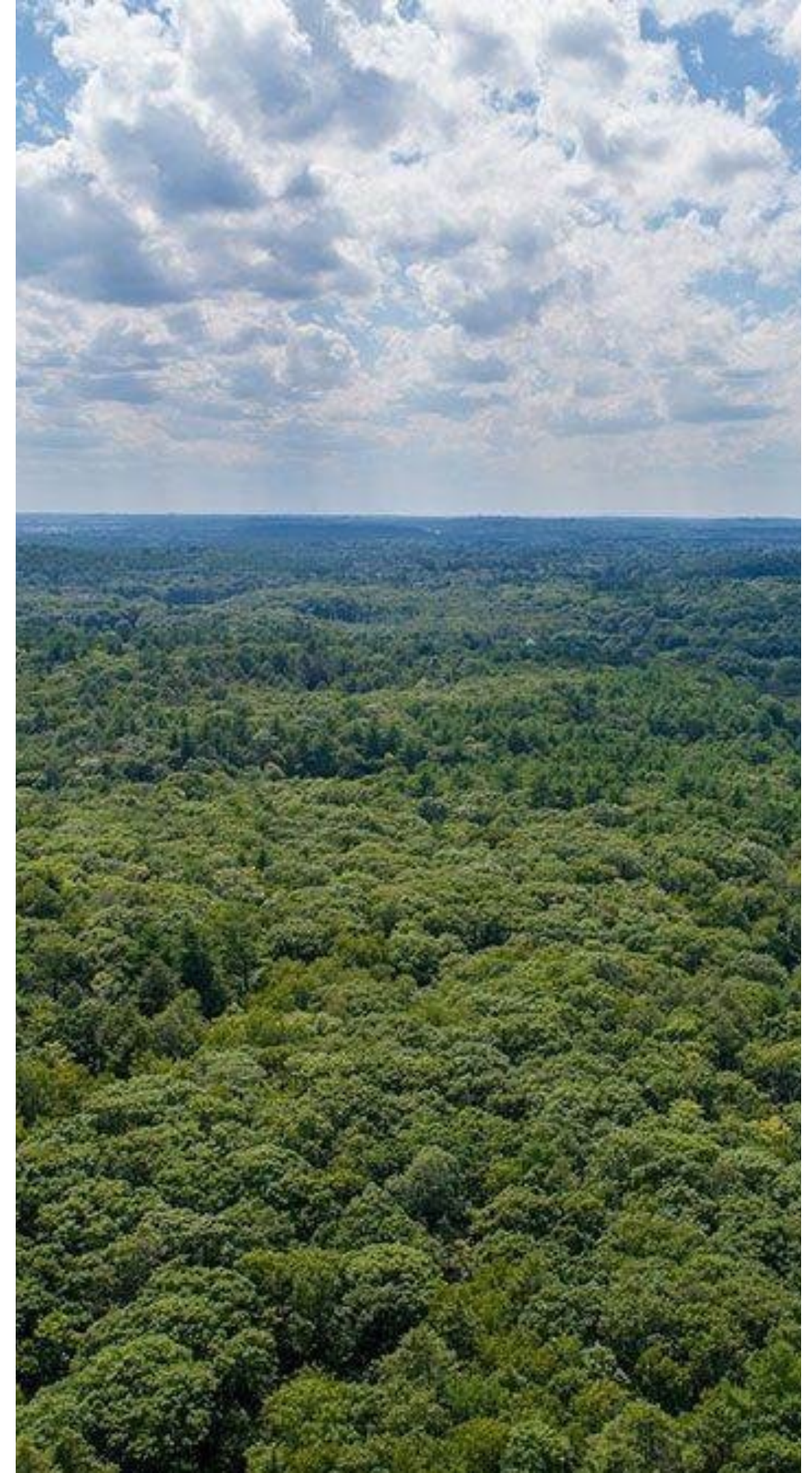
5 Projects on developed vs undeveloped land

Differentiates exemptions and mitigation requirements for projects based on status of project site.

Example:

Current bylaw: No explicit differentiation

Revised bylaw: Designed to encourage development on already developed land and discourage development of undeveloped land with intact ecosystems. (Sec. 7 (C))



Sec 7 (C: 1-4)

1. Exempt activities:

- Existing development/permitted pre-Bylaw
- Health & safety projects (e.g. septic)
- Ecological improvements (e.g. invasive species control)

2. Minor Activities

- RDA with negative determination

Requirements:

- *25 ft No Disturb & 50 ft No Build for Vernal Pools and Wetlands*

3. Redevelopment Activities

- NOI utilizing only already developed land

Requirements:

- *Enhance on-site natural areas by 50%*
- *Naturalization of 25% of Regulated Buffer, or*
- *Restoration of same sq ft of above within same watershed*

4. Natural Area Development Activities

Conversion to:

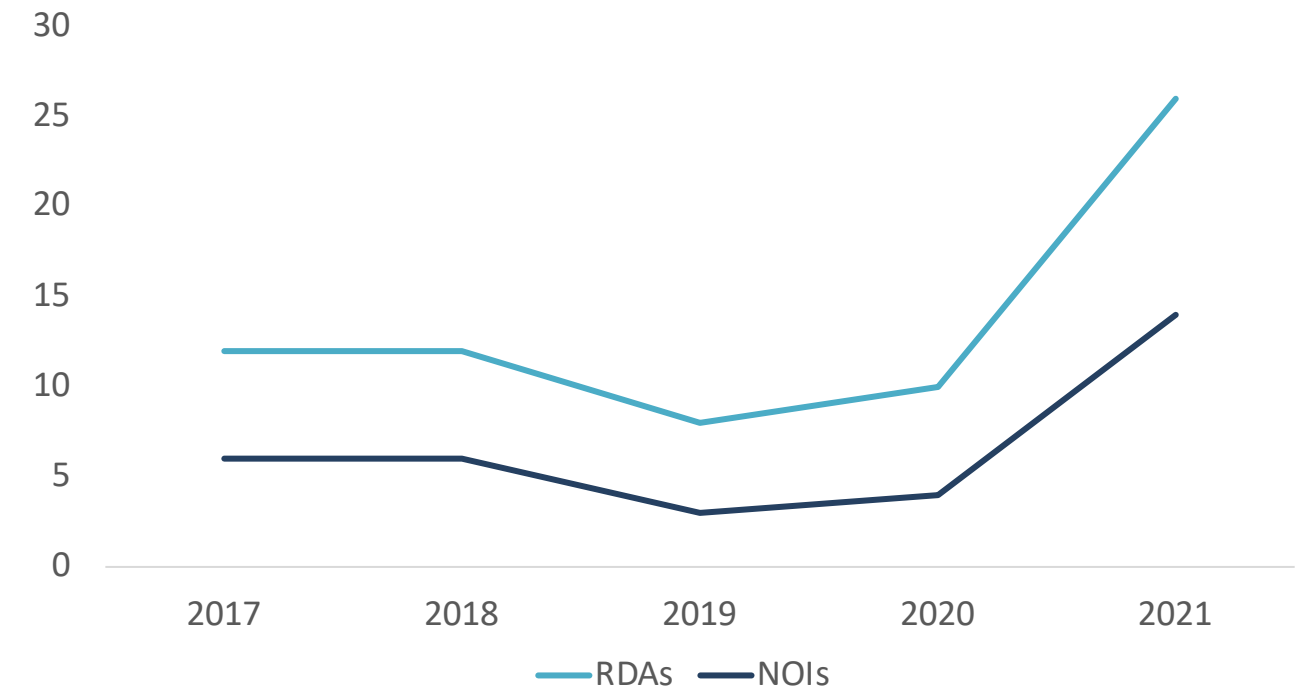
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|--|----------------------------------|
| • Non-natural vegetation (e.g. lawn) | • <i>1.5 : 1 replace/restore</i> |
| • Permeable hardscaping (e.g. stones) | • <i>2 : 1 replace/restore</i> |
| • Impermeable hardscaping (e.g. driveway, roof, etc) | • <i>3 : 1 replace/restore</i> |



6 The time is now

Increased local development:

Permit requests to the Conservation Commission increased substantially in 2021



Current Bylaw out of date:

The last revision to the Hamilton Conservation Bylaw was done in 2006.

Revision process has been ongoing: Work to revise the Bylaw has been ongoing for 1.5 years.



Next Steps

- Public review/comment (ongoing)
- Revisions by Conservation Commission (Aug 2022)
- Review by Town Counsel (Aug 2022)
- Vote at Special Town Meeting (Oct 2022)
- Review by Attorney General
- Develop Regulations



Questions