

Wetlands Protection Bylaw

Section 1 Purpose

The purpose of this by-law is to protect the wetlands, related water resources, and adjoining land areas in the Town of Wrentham by controlling activities likely to have a significant or cumulative effect upon the important public values of those areas, which include, without limitation, the following: public or private water supply, ground water supply, flood control, erosion and sedimentation control, storm damage prevention, protection of surrounding land and other homes or buildings, water pollution control, fisheries, wildlife habitat, agriculture, recreation, and the historic and natural scenic character of wetland resource areas, watercourses, lakes and ponds (collectively, the “interests protected by this by-law”).

Section 2 Definitions

The following definitions shall apply in the interpretation and implementation of this by-law.

- A. The term “alter” means to change the conditions of any area subject to protection under this by-law and shall include but not be limited to one or more of the following actions upon areas described in this by-law:
- i. the removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind;
 - ii. the changing of preexisting drainage characteristics, flushing characteristics to include soil structure, salinity distribution to include soil compositions and chemistry, sedimentation patterns, flow patterns and flood storage retention areas;
 - iii. the disturbance or raising or lowering of the water level or water table;
 - iv. the dumping, discharging or filling with any material which could degrade the water quality or change water flow or quantity;
 - v. the driving of piling, erection of buildings or structures of any kind;
 - vi. the placing of any object or obstruction whether or not it interferes with the flow of water;
 - vii. the destruction of plant life, including the cutting of trees, and the removal of stumps, within any resource area other than the buffer zone, or the cutting of shrubbery or trees greater than 50% of the overhead canopy;
 - viii. the changing of water temperature, biochemical oxygen demand and other natural characteristics of the receiving water;
 - ix. any activities, changes or work which pollutes any body of water or ground water; and
 - x. the application of pesticides or herbicides.
- B. The term “person” shall include any individual, group of individuals, associations, partnerships, corporations, business organizations, trust, estate, Commonwealth of Massachusetts when subject to town by-laws, any public or quasi-public corporation or body when subject to town by-laws or any other legal entity, including the Town of

Wrentham or its legal representative, agents or assigns.

Except as otherwise provided in this by-law or in regulations of the Commission, the definitions of terms in this by-law shall be as set forth in the Wetlands Protection Act, G.L.C. 131, Sec. 40, and regulations 310, CMR 10.00, thereunder.

Section 3 Jurisdiction

Except as permitted by the Conservation Commission or as provided in this by-law, no person shall remove, fill, dredge, build upon, degrade, or otherwise alter the following resource areas: any bank, freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool (whether certified or potential), reservoir, lake, pond, creek, river or stream, or any land under said waters or any land subject to flooding or inundation by groundwater or surface water, or any land within 100 feet of any of the aforesaid resource areas (collectively, the “resource areas protected by this bylaw”) and within 200 feet of any perennial stream. The area of flooding or inundation shall include all lands up to the elevation of the 100-year floodplain.

Section 4 Exceptions

The application and permit required by this by-law shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and 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, provided that written notice has been given to the Commission prior to the commencement of the work, and provided that the work conforms to performance standards and design specifications in any regulations adopted by the Commission.

The application and permit required by this by-law shall not be required for work performed for normal maintenance or improvement of land in agricultural use, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

The application and permit required by this by-law shall not apply to emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this by-law. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

Other than stated in this section, the exceptions provided in the Wetlands Protection Act, G.L.C. 131, Sec. 40, and Regulations, 310 CMR 10.00, shall not apply under this by-law.

Section 5 Applications for Permits and Requests for Determination

Written application shall be filed with the Commission to perform activities affecting resource areas protected by this by-law. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this by-law. No activities shall commence without receiving and complying with an appropriate permit issued pursuant to the bylaw whether the entity allowing or performing the work is private, commercial, municipal, or agricultural.

The Commission in an appropriate case may accept as the permit application and plans under this by-law the Notice of Intent and plans filed under the Wetlands Protection Act, G.L.C. 131, Sec. 40, and Regulations 310 CMR 10.00.

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may be writing request a determination from the Commission. Such a request for determination shall include information and plans as are deemed necessary by the Commission. The Commission may determine that a proposed activity or an area is not governed by this bylaw subject to the observance of conditions imposed by the Commission on the work to be performed by the applicant or may require a Notice of Intent.

At the time of a permit application or request for determination, the applicant shall pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act, G.L.C. 131, Sec. 40, and Regulations, 310 CMR 10.00.

Section 6 Fees

A. Administrative Fee

The Commission is authorized to include in any regulations adopted under this by-law a fee schedule imposing fees for permits, determinations and certificates of compliance. Such fees must be based on a reasonable estimate of the actual costs incurred by the Commission in carrying out its duties under this by-law, taking into account any fees provided under the Wetlands Protection Act. Failure to pay any fee required by regulations duly promulgated by the Commission shall be grounds for denial of the application.

B. Consultant Fees

The Commission is authorized to require the applicant to pay the reasonable costs and expenses borne by the Commission for specific expert engineering and consultant services deemed necessary by the Commission to review any application and/or submissions, and to monitor or provide field services required under an Order of Conditions. Such services may include, without limitation, the delineation, survey, monitoring, and inspection of wetland resource areas including any construction within Conservation Commission's jurisdiction, including an analysis of resource area values,

hydrogeological and drainage analyses, evaluation of wildlife habitat, and legal services. The Commission is authorized to charge the applicant for said fee based upon its reasonable finding that the additional information acquirable only through outside consultants would be necessary for the making of an objective decision, and when the application or request for determination proposes any of the following:

- i. the alteration of 500 square feet or more of any land under a water body or bordering vegetated wetlands;
- ii. the alteration of 50 linear feet or more, or the alteration of 10% or more, whichever is less, of the bank of any water body or waterway;
- iii. the alteration of 1000 square feet or more of the buffer zone;
- iv. the creation or evaluation of any point source discharge, detention or retention basin, water control structure or wetland replication area;
- v. new construction proposed within any area that falls within the jurisdiction of the Conservation Commission as listed in Section 2, *Jurisdiction*; or
- vi. the determination of the boundary line of any resource area by the Commission.

Said fee may be requested of the applicant within thirty (30) days of the filing of the application, or from the last amendment thereto. In its request, the Commission shall identify the consultant it has selected and include an estimate of the charges for the proposed services. The applicant may appeal the selection of the consultant to the Board of Selectmen within ten (10) days of receiving notice from the Commission of the same. The Selectmen may set aside the selection of the consultant only if the consultant lacks sufficient qualifications to perform the work or has a conflict of interest. Any fees paid to the Commission under this section shall be placed into a professional services conservation account.

C. Waiver/Non-Applicability of Fees

No application or consultant fees shall be due from the Town of Wrentham in connection with any project performed by the Town or on its behalf, or from any person having no financial connection with a property which is the subject of a request for determination.

D. Revolving Fund

Subject to the adoption of appropriate regulations by the Conservation Commission under G.L. Ch. 40, Section 8C, any consultant fees collected under Section 5.2 shall be deposited, expended, and accounted for under the provisions of G.L. c. 44, Section 53G.

Section 7 Notice and Hearings

Any person filing a Notice of Intent with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 100 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice to abutters shall state where copies of the permit application may be examined and obtained by abutters. An affidavit of the person

providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of the hearing, and the determination itself shall be sent by the applicant to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any permit application or request for determination, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the Town of Wrentham.

The Commission shall commence the public hearing within 21 calendar days from receipt of a completed permit application or request for determination unless an extension is authorized in writing by the applicant.

The Commission shall issue its permit or determination in writing within 21 calendar days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

The Commission in an appropriate case may combine its hearing under this by-law with the hearing conducted under the Wetlands Protection Act, G.L.C. 131, Sec. 40, and Regulations 310, CMR 10.00. Notice of a hearing so combined shall not be considered defective solely because it fails to make reference to this by-law.

The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearings, which may include receipt of additional information offered by the applicant deemed necessary by the Commission in its discretion, or comments and recommendations of local, State or Federal Regulatory agencies. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

Section 8 Burden of Proof

The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the interests protected by this by-law. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny such permit or to grant a permit with conditions.

Section 9 Permits and Conditions

If, after said hearing, the Commission determines that the activities which are subject to the permit application are likely to have a significant or cumulative effect upon the interests protected by this by-law, the Commission, within 21 days of the close of the public hearing or such further time as the Commission and the applicant shall agree on, shall issue or deny a permit for the activities proposed. If it issues a permit, the Commission shall impose conditions which it deems necessary or desirable to protect those interests, and all work shall be done in accordance with those conditions.

The Commission is empowered to deny a permit for failure to meet the requirements of this by-law; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the interests protected by this by-law; and where no conditions are adequate to protect those interests. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

Lands within 200 feet of perennial rivers and streams, and lands within 100 feet of other resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or watercourse, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of those activities. In addition, such areas are often vital to the preservation of species that depend on wetlands for food or reproduction. The Commission therefore will require that the applicant maintain a fifty-foot wide continuous strip of undisturbed vegetative cover within the 200-foot (or 100-foot) area. A variance to this criteria may be granted under three circumstances: 1) if the applicant demonstrates that the proposed project will have no adverse affect on any of the interests protected by this bylaw; 2) if the project is a rare or unusual case; and 3) if the project is not approved by the Commission this action will restrict the use of the property to such an extent to constitute a constitutional taking without compensation. If no evidence is supplied to support the claims that the project meet the specified criteria above the hearing will be delayed or continued until this information is provided, or the project request will be denied without prejudice.

To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible, to minimize wetlands alteration, and where alteration is unavoidable, to incorporate mitigation measures into the project design.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed for up to three years, unless otherwise set by the Commission, provided that a request for a renewal is received in writing by the Commission one month prior to expiration.

For good cause the Commission may revoke a permit or determination issued under this by-law after notice to the holder of the permit or determination, notice to the public, abutters, and town boards, pursuant to Section 5 and 6, and a public hearing.

The Commission in an appropriate case may combine the permit or determination issued under this by-law with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act, G.L.C. 131, Sec. 40, and Regulations 310, CMR 10.00.

No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Registry of Deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded.

Section 10 Security

As part of a permit issued under this by-law, the Commission may require, in addition to any security required by any other town or state board, commission, agency or officer, that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

- i. by a proper bond or deposit of money or negotiable securities, sufficient in the opinion of the Conservation Commission to secure performance of the conditions and observance of the safeguards of such permit, to be released upon the issuance of a certificate of compliance for work performed pursuant to the permit; or
- ii. by a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Commission whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

Section 11 Regulations

The Commission shall promulgate after due notice and public hearing Rules and Regulations to effectuate the purposes of this by-law. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this by-law.

At a minimum these regulations shall define key terms in this by-law not inconsistent with the by-law and procedures governing the amount and filing of fees.

Section 12 Enforcement

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this by-law, or cause, suffer, or allow such activity to continue or allow such fill or other alteration to be left in place, without the required authorization pursuant to this by-law.

The Commission, its agents, officers, and employees shall have authority, with prior approval from the property owner or pursuant to court process, to enter upon privately owned land for the purpose of performing their duties under this by-law and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary.

The Commission shall have authority to enforce this by-law, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Any

person who violates provisions of this by-law may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations.

Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this by-law, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the by-law regulations, permits, or administrative orders violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedure set forth in G.L.C. 40, Sec. 21D.

Section 13 Appeals

A decision of the Commission shall be reviewable in the Superior Court in an action filed within 60 days thereof, in accordance with General Laws chapter 249, Section 4.

Section 14 Relation to Wetlands Protection Act

This By-law is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, G.L.C. 131, Sec. 40, and regulations 310, CMR 10.00, thereunder.