

TOWN OF NORFOLK

WETLAND PROTECTION BYLAW

ARTICLE VII, SECTION 2 of the TOWN OF NORFOLK BYLAWS

(Town Meeting, October, 1989)

most recent revisions

MAY 26, 1998 (ADDITION OF RIVERFRONT AREA)

MAY 13, 2003 (ADDITION OF REPETITIVE PETITIONS)

May 18, 2010 (replace “wetland” with “resource area(s)”)

May 18, 2010 (Addition of “vernal pool” to s. A(iii)(1)Purpose

May 18, 2010 (Addition of words “degrade”, “discharge into” to paragraph A(ii)Purpose

May 18, 2010 (change sec.E Notice and Hearings by eliminating notification to abutters within 300’ to 100’.

May 18, 2010 (change sec.E Notices and Hearings by Eliminating abutter notification for Requests For Determination of Applicability (RFD)

May 18, 2010 (change sec.F. Coordination with Other Boards by eliminating the words “Water Commissioners” and replace with “Department of Public Works” and adding “Fire Department” to the list of reviewers.

A. PURPOSE

The purpose of this bylaw is to protect the wetlands, related water resources, and adjoining land areas in this municipality by prior review and control of activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries, wildlife habitat, recreation, aesthetics, agriculture, aquaculture values (collectively, the "resource area values protected by this bylaw").(change "wetland" to "resource area"- Town Meeting vote of 5/18/10)

B. JURISDICTION

Except as permitted by the Conservation Commission (Commission) or as provided in this Bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into, or otherwise or alter the following resource areas: (add "degrade, discharge into" – Town Meeting vote of 5/18/10)

1) Resource areas within 100 feet of any freshwater wetland, marsh, wet meadow, bog or swamp, or vernal pool; within 100 feet of any bank, beach, or flat; any lake, river, pond, stream, estuary; or Riverfront Area; any land under said waters; or within 100 feet of any land subject to flooding or inundation by groundwater or surface water. (Riverfront Area - May 26, 1998 Annual Town Meeting), (Add "vernal pool" – Town Meeting vote of 5/18/10)

C. EXCEPTIONS

1) The permit and application required by this bylaw 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 to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Commission prior to the commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

2) The permit and application required by this bylaw shall not be required for work performed for normal maintenance or improvement of land in agricultural use or in aquacultural 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.

3) The permit and application required by this bylaw shall not apply to emergency projects necessary for the protection of the health or 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 Conservation Commission or its agent

certified the work as an emergency project, provided that the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency, and provided that within 21 days of the commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this bylaw. 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.

4) Other than stated in this section the exceptions provided in the Wetlands Protection Act shall not apply under this Bylaw.

D. APPLICATIONS FOR PERMITS AND REQUESTS FOR DETERMINATIONS

1) Written application shall be filed with the Commission to perform activities regulated by this bylaw affecting resource areas protected by this Bylaw. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this Bylaw.

2) The Commission, in an appropriate case, may accept as the applications and plans under this Bylaw, the Notice of Intent and plans filed under the Wetlands Protection Act, M.G.L. c.131, s.40.

3) Any person desiring to know whether or not proposed activities or an area is subject to this Bylaw may in writing request a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.

4) At the time of an application or request, the applicant shall pay a filing fee specified in the regulations of the Commission. This fee is in addition to that required by the Wetland Protection Act, M.G.L. c. 131, section 40. The Commission may waive the cost for a Request for Determination filed by a person having no financial connection with the property, which is the subject of the request.

5) Upon receipt of a permit application or request for determination, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the consultant fee. The specific consultant services may include by are not limited to resource area survey and delineation, analysis or resource area values, including wildlife habitat evaluations, hydrogeologic and drainage analysis, and environmental or land use law.

6) The Commission may require the payment of the consultant fee at any point in its

deliberations prior to a final decision. The applicant shall pay the fee to the Town to be put into a consultant services account of the Commission, which may be drawn upon by the Commission for specific consultant services approved by the Commission at one of its public meetings.

7) The exercise of discretion by the Commission in making its determination to require the payment of a fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision.

8) (deleted – 10/26/04)

9) (deleted – 10/26/04)

10) (deleted – 10/26/04)

11) (deleted – 10/26/04)

12) The town hereby accepts G.L. c.44, sec.53G for purposes of administering jointly the filing fee and professional service conservation account provisions of this bylaw (consultant fees- October, 1992 Town Meeting)

E. NOTICE AND HEARINGS

1) Any person filing an application with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivery, 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 or any property owner within 100 feet of the property line of the land where the activity is proposed, including any in another municipality or across a body of water. The notice to abutters shall enclose a copy of the application with plans, or shall state where copies may be examined and obtained by abutters free of charge. 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 Commission to the owner as well as to the person making the request.(change to abutter notification from 300' to 100' - Town Meeting vote of 5/18/10)

2) 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 Commission to the owner as well as to the person making the request. (added by Town Meeting vote of 5/18/10).

2) The Commission shall conduct a public hearing on any application or Request for Determination, with written notice given at the expense of the applicant, five working days prior to the hearing, in a newspaper of general circulation in the municipality.(renumbered by Town Meeting vote of 5/18/10)

3) The Commission shall commence the public hearing within 21 days from receipt of a completed application or Request for Determination unless an extension is authorized in

writing by the applicant.(renumbered by Town Meeting vote of 5/18/10).

- 4) The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.(renumbered by Town Meeting vote of 5/18/10)
- 5) The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, MG.L. c. 131, section 40.(renumbered by Town Meeting vote of 5/18/10)
- 6) The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 6. 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.(renumbered by Town Meeting vote of 5/18/10)

F. COORDINATING WITH OTHER BOARDS

Any person filing a permit application or a Request for Determination with the Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or had delivery, to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, Fire Department, Building Commissioner and Department of Public Works.(Add "Fire Department" and Department of Public Works" Town Meeting vote of 5/18/10)

An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until such boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account by which shall not be binding on the Commission. The applicant shall have the right to receive any such comments and recommendations and to respond to them at a hearing of the Commission, prior to final action.

G. PERMITS, DETERMINATIONS, AND CONDITIONS

- 1) If the Commission, after a public hearing determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the wetland values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions, which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.
- 2) The Commission is empowered to deny a permit for failure to meet the requirements of

this bylaw; 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 or the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

3) 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 once for an additional one year period, provided that a request for renewal is received in writing by the Commission prior to expiration.

4) For good cause, the Commission may revoke or modify a permit issued under this bylaw after notice to the holder of the permit, notice to the public, abutters, and town boards pursuant to Section E and Section F and after a public hearing. (Add Sec. E and Section F and after" –Town Meeting vote of 5/18/10)

5) The Commission in an appropriate case may combine the permit or other action on an application issued under this bylaw with the Order of Conditions issued under the Wetlands Protection Act.

6) No work proposed in any 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 thereby be 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 so recorded.

H. REGULATIONS

1) After public notice and a public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this Bylaw. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of laws shall not act to suspend or invalidate the effect of this bylaw.

2) At a minimum these regulations shall define key terms in this bylaw not inconsistent with this Bylaw.

I. DEFINITIONS

The following definitions shall apply in the interpretation and implementation of this bylaw.

1) The term "person" shall include any individual, group or individuals, association,

partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

2) The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- a) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
 - b) Changing of pre-existing drainage characteristics, flushing characteristics, sedimentation pattern, or flood retention characteristics;
 - c) Drainage or other disturbances of water level or water table;
 - d) Dumping, discharging or filling with any material which may degrade water quality;
 - e) Placing of fill, or removal of material, which would alter elevation;
 - f) Driving of piles, erection or repair of buildings, or structures of any kind;
 - g) Placing of obstructions or objects in water;
 - h) Destruction of plant life including cutting of trees;
 - i) Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
 - j) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater;
 - k) Application of pesticides or herbicides.
- l) Except as otherwise provided in the regulations of the Commission, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act, G. L. c. 131, Section 40.

J. SECURITY

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency or official, the Commission may require 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:

- (1) By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit;
- (2) 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 this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

K. ENFORCEMENT

- 1) The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.
- 2) The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions.
- 3) 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.
- 4) Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- 5) Any person who violates any provision of this bylaw, regulations thereunder, or permits issued thereunder, shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, regulations, or permit violated shall constitute a separate offense.
- 6) 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, as amended, and adopted by the Town as a general bylaw. (Non-criminal dispositions - October, 1992 town meeting)

L. BURDEN OF PROOF

The applicant for a permit shall have the burden of proving a preponderance of the

credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the wetland values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions

M. APPEALS

A decision of the Commission shall be reviewable in the Superior Court in an action filed with 60 days thereof, in accordance with G.L. c.249, Section 4.

N. RELATION TO THE WETLAND PROTECTION ACT

This bylaw 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, Section 40, and regulations thereunder.

O. SEVERABILITY

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been used. (5/31/89)

P. NON-CRIMINAL DISPOSITION

As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedure set forth in MGL Chapter 40, Section 21D, as amended and adopted by the Town as a General Bylaw. (10/27/92)

Q. Repetitive Applications

No application which has been finally and unfavorably acted on by the Commission shall be acted favorably upon within one year after the date of final unfavorable action unless the Commission finds, by a majority vote, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings. (Town Meeting May 13, 2003)