

ARTICLE 17: AMEND GENERAL BY-LAWS – WETLANDS PROTECTION BY-LAW

To amend the By-Laws of the Town of Weston by inserting a new by-law, Article XVI, “Wetlands Protection” as stated below:

ARTICLE XVI. Wetlands Protection By-Law

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 Weston by prior review and control of activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland interests and 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, and wildlife habitat (collectively, the "wetlands values protected by this bylaw").

Section 2. Jurisdiction

Except as permitted by the Commission or as provided in this Bylaw or its Regulations hereunder, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas:

1. any marshes; wet meadows; bogs; swamps; springs; banks; reservoirs; lakes; ponds; rivers; brooks and creeks, or perennial or intermittent streams;
2. any land under the aforementioned waterways and waterbodies;
3. any wetlands bordering on the aforementioned resource areas;
4. isolated wetlands so long as they cover at least 2,500 square feet of surface area;
5. any adjoining lands out to a distance of 100 feet of all aforementioned resources areas known as the Buffer Zone;
6. any Vernal Pool, including Vernal Pools not certified by the MassWildlife Natural Heritage & Endangered Species Program, and adjoining lands out to a distance of 100 feet known as the Vernal Pool Habitat;
7. lands within 200 feet of perennial streams or rivers known as the Riverfront Area; and
8. any Land Subject to Flooding (bordering or isolated).

(collectively the “resource areas protected by this Bylaw”).

Section 3. Definitions

Except as may be otherwise provided in this bylaw or in 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, § 40, as amended, or regulations promulgated thereunder.

Section 4. Exemptions and Exceptions

The permit and application required by this article shall not be required for maintaining or repairing, but not changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, sewer, or telecommunication services, provided that written notice has been given to the Commission at least 14 days prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

The provisions of this bylaw shall not apply to any work performed for normal maintenance or improvement of land in agricultural use or in aqua cultural use as defined in the Wetlands Protection Act Regulations, 310 CMR 10.04.

The application and permit required by this bylaw shall not be required for 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, in writing, 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 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.

Except where otherwise stated in this section, the minor activity exemptions provided under the Wetlands Protection Act (G.L. c. 131, § 40) and regulations promulgated pursuant thereto (310 CMR 10.00) shall apply to the wetland resource areas protected under this bylaw.

Section 5. Applications and Fees

Written application (Notice of Intent) shall be filed with the Commission to perform activities regulated by this bylaw affecting resource areas protected by this bylaw. This 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 pursuant to this bylaw.

The Commission in an appropriate case shall accept as the application and plans under this bylaw any application and plans filed under the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00), together with such other information and plans as is required by this bylaw and regulations issued hereunder.

Any person desiring to know whether or not proposed activity or an area is subject to this bylaw may in writing request a determination (Request for Determination of Applicability) from the Commission. The Commission shall accept a Request for Determination of Applicability under the Wetlands Protection Act as a request under this bylaw. Such a request for determination shall contain information and plans specified by the regulations of the Commission.

Any person desiring to certify, for purposes of this bylaw, the limits of resource areas on a site may file a request for wetland delineation. This application shall include such information and plans as are deemed necessary by the Commission to describe and define the wetland resource areas. The Commission shall accept an Abbreviated Notice of Resource Area Delineation under the Wetlands Protection Act as a similar request under this bylaw.

At the time of an application request, the applicant shall pay a filing fee specified in regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act. The Commission shall waive the filing fee for an application or request filed by a government agency.

The Commission may, at the expense of the applicant, retain an independent consultant for the purpose of providing the Commission with the data, analysis, or other information deemed by the Commission to be reasonably necessary or appropriate to assist the Commission in reviewing the application or rendering its decision, in conformity with the provisions of G.L. c. 44, § 53G, and with the rules promulgated by the Commission for hiring outside consultants under G.L. c. 44, § 53G, which are incorporated herein by reference.

Section 6. Notice of Hearings

When appropriate, the Commission may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, G.L. c. 131, § 40, as amended.

Any person filing an application with the Commission for a permit or for resource area delineation certification 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 within 300 feet of the site of the project or wetland, including any in another municipality or across a body of water. The notice to abutters shall enclose a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters. When a person requesting a determination is other than the owner, the notice of the hearing shall be sent by the Commission to the owner as well as to the person making the request. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. Notices shall be provided to abutters in accordance with G.L. c. 131, § 40, 310 CMR 10.00, et. seq., and any regulations promulgated by the Commission hereunder.

The Commission shall hold a public meeting on any request for a determination of applicability, with written notice given at the expense of the applicant, at least five working days prior to the meeting, in a newspaper of general circulation in the Town. The Commission shall issue a determination of applicability decision within 21 days of receipt of a complete application unless an extension is agreed to in writing by the applicant. The Commission shall have authority to request that the applicant agree to continue the meeting to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion. Refusal from an applicant to agree to a requested continuance shall be grounds for denial of the application.

The Commission shall commence the public hearing within 21 days from the receipt of a completed Notice of Intent or Abbreviated Notice of Resource Area Delineation application unless an extension is authorized in writing by the applicant. The hearing under the bylaw may be continued in the same manner and conditions as under the Wetlands Protection Act and regulations.

The Commission shall issue its permit, its denial of a permit, its order of resource area delineation ("ORAD") or its determination of applicability ("DOA") in writing within the time period specified in G.L. c. 131, § 40, and 310 CMR 10.00, et. seq., unless an extension is authorized in writing by the applicant.

Section 7. Permits and Conditions

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 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.

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 performance standards and other requirements in this bylaw and the regulations issued hereunder, 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.

A permit shall expire three years from the date of issuance. The Commission may extend a permit for one or more periods of up to three years each, upon written request made at least 30 days prior to the expiration of the permit.

For good cause, the Commission may revoke or modify a permit issued under this bylaw upon reasonable notice to the permit holder, and upon a vote a majority of the Commission at a duly-noticed public hearing. Requests for amendments to permits shall follow the procedures set forth in MassDEP Wetlands Policy 85-4.

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.

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 Middlesex South Registry of Deeds or, if the land affected thereby be registered land, in the Registry Section of the Land Court for the Middlesex District, and until the holder of the permit certifies in writing to the Commission that the permit has been so recorded.

Section 8. Regulations

After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw, effective when voted and filed with the town clerk. 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 bylaw. At a minimum these regulations shall reiterate the terms defined in this bylaw, define additional terms not inconsistent with the bylaw, and impose filing and consultant fees. The regulations may also include specific limitations on development within the buffer zone to any resource area protected hereunder, including but not limited to imposition of a No-Disturb Zone within the buffer zone.

Regulations adopted by the Commission under this section shall not become effective until written notice, with a copy of the proposed regulation(s), is given to the Select Board. The Select Board may, within

ninety (90) days of receipt of the proposed regulation, vote to disapprove adoption, at which time the proposed regulation shall be deemed null and void. If the Select Board votes to approve the proposed regulation, or takes no action within ninety (90) days of receipt of the proposed regulation, the regulation shall take effect.

Section 9. Security

As a 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:

- A. 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;
- B. By accepting 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. This method shall be used only with the consent of the applicant, and upon approval as to form by Town Counsel.

Section 10. Enforcement

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

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

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

Whoever violates any provision of this bylaw, regulations hereunder, or permits issued hereunder, may be punished by a fine of \$300 per day per offense. 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.

As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in G.L. Ch. 40 § 21D, which has been adopted by the Town in Article V, Section 2 of the General By-Laws.

The following shall be the fines applicable to violations enforced pursuant to non-criminal disposition procedures of G.L. c. 40, § 21D:

- First violation: Warning
- Second violation: \$100.00
- Third violation: \$200.00
- Fourth and subsequent violations: \$300.00

Section 11. Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the resource area 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.

Section 12. Appeals

All decisions issued by the Commission under the Bylaw shall be final and appeal by any person aggrieved by such a decision may be filed in a court of competent jurisdiction pursuant to G.L. c. 249, § 4.

Section 13. Relation to the Wetlands 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, § 40, as amended, and regulations thereunder.

Section 14. 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 previously issued.

Section 15. Effective Date

This bylaw shall take effect thirty (30) days after approval by the Attorney General, subject to the posting and publishing requirements of G.L. c. 40, § 32.

Or take any other action relative thereto.

Article 17 – Explanation: This purpose of this Article and the proposed Wetlands Protection Bylaw is to empower the Town of Weston Conservation Commission to adopt local regulations to establish additional wetland protections beyond the protections of the State Wetlands Protection Act. The regulations may protect resources which are not protected under the State Wetlands Protection Act, such as isolated wetlands, vernal pool habitat, and the 100-foot buffer zone to existing wetland resource areas. The regulations may codify existing policy by establishing a 25-foot No-Disturb Zone requirement. A majority vote of Town Meeting is required for approval of this article.