

ARTICLE XV ¹⁵

WETLANDS PROTECTION BY-LAW

Section 1. Purpose

The purpose of this by-law is to protect the foreshores, wetlands, related water resources, and adjoining land areas in this municipality by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion, and sedimentation control, storm damage, storm damage prevention, water pollution, fisheries, shellfish, wildlife habitat, recreation, aesthetics, agriculture, and aqua values (collectively, the "wetland" values protected by this by-law).

Section 2. Jurisdiction ¹⁵⁻²

Except as permitted by the Conservation Commission or as provided in this by-law, no person shall remove, fill, dredge, build upon, or alter the following resource areas: within 200 feet of a riverfront area as defined in MGL Chapter one hundred and thirty-one Section forty, within 100 feet of freshwater wetland, coastal wetland, marsh wet meadow, bog or swamp; within 100 feet of any bank, beach, dune, or flat; any lake, river, pond, stream, estuary, or the ocean; within 100 feet of any lake, river, pond, stream, estuary, or the ocean: any land under said waters; or within 100 feet of any land subject to flooding or inundation by groundwater, surface water, tidal action, or coastal storm flowage.

Section 3. Exceptions ¹⁵⁻³

The permit and application 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 to provide electric, gas, water, drainage, sanitary sewer, telephone, telegraph or other telecommunication services, provided that the structure or facility is not substantially changed or enlarged, and provided that written notice has been given to the Commission fourteen (14) days prior to commencement of work. The Commission may after reviewing the proposed work require that a permit application be filed with the Commission as provided in this by-law.

The permit and application required by this Wetlands Protection By-law shall not be required for vista pruning, provided the activity occurs more than 50 feet from the mean annual high water line within a Riverfront Area or from Bordering Vegetated Wetland, whichever is farther, or for vegetation cutting for public safety limited to the removal of diseased or damaged trees or branches that pose an immediate and substantial threat". (Pruning of landscape areas is not subject to jurisdiction under this Article XV).

¹⁵ A Wetlands protection by-law was first inserted under article 95, ATM 1980. Under article 26, ATM 1986 a more comprehensive by-law was substituted for the 1980 version.

¹⁵⁻² As amended under article 38, ATM May 19, 1997.

¹⁵⁻³ As amended under article 11, STM April 29, 1989. As amended under article 34, ATM May 10, 2017.

The permit and application required by this by-law 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 certifies the work as an emergency project, provided that the work is performed only for the time & place certified by the Conservation 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 in 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 shall not apply.

Section 4. Application for Permits and Requests for Determination ¹⁵⁻⁴

Written applications shall be filed with the Commission to perform activities regulated by this by-law affecting the 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 by-law.

The Commission in an appropriate case may accept as the application and plans under this by-law the Notice of Intent and plans filed under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, or as it may be amended from time to time.

Any person desiring to know whether or not a proposed activity or an area is subject to this by-law 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. In the absence of regulations, the same notice, plans and specifications required to be filed by an applicant under M.G.L., Chapter 131, Section 40, or as it may be amended from time to time, will be accepted as fulfilling the filing requirements of this by-law.

¹⁵⁻⁴ As amended under article 38, ATM May 19, 1997.

At the time of an application or 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, M.G.L., Chapter 131, Section 40. In addition, the Commission is authorized to require the applicant to pay the costs and expenses of any expert consultant deemed necessary by the Commission to review the application or request up to a maximum of \$5,000.00. The Commission may waive the filing fee and costs and expenses for an application or request filed by a government agency and shall waive them for a request for determination filed by a person having no financial connection with the property which is the subject of the request.

Section 5. Notice and Hearings ¹⁵⁻⁵

Any person filing a application or request for determination with the Commission at the same time shall give written notice thereof, by certified mail, certificates of mailing, or hand delivery (if by hand delivery, the applicant shall provide notarized proof of delivery to the Commission) to all abutters according to the most recent records of the Assessors, including those across a traveled way or body of water. The Assessors shall certify to the Commission the names and addresses of all abutters and such certification shall be conclusive for all purposes. 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 free of charge. When a person requesting a determination is other than the owner, the request, the notice of the meeting and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any applications 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.

The Commission shall commence the public hearing within 21 days from receipt of a completed application or request for determination. The Commission shall issue its permit or determination in writing within 31 days of the close of the public hearing thereon. The Commission in an appropriate case and its discretion, may combine its hearing under this by-law with any hearing required to be conducted under the Wetlands Protection Act, M.G.L., Chapter 131, Section 40, or as amended from time to time.

¹⁵⁻⁵ As amended under Article 24, ATM 1991. As amended under article 34, ATM May 10, 2017.

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.

Section 6. Coordination With Other Boards ¹⁵⁻⁶

Any person filing a permit application shall provide a copy thereof at the same time, by certified mail or hand delivery (if by hand delivery, notarized proof of delivery shall be provided to the Commission), to the Board of Selectmen, Planning Board, Zoning Board of Appeals, Board of Health, Town Engineer, Fire Chief, and Building Inspector. 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 but which shall not be binding on the Commission. The applicant shall have the right to receive any such comments and recommendations, and respond to them at a hearing of the Commission, prior to final action.

Section 7. Permits, Determinations, 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 by-law, the Commission, within 31 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. 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 avoid or prevent unacceptable significant or cumulative effects upon the wetlands values protected by this by-law; and where conditions are not adequate to protect those values, or if in the commission's judgment such denial is necessary to preserve environmental quality of both the subject lands and contiguous lands. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

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

¹⁵⁻⁶ As amended under article 24, ATM 1991.

period, provided that a request for a renewal is received in writing by the Commission prior to expiration.

For good cause the commission may revoke or modify a permit issued under this by-law after public notice and public hearing, and notice to the holder of the permit.

The Commission in an appropriate case may combine the permit or other action on an applications issued under this by-law with the Order of Conditions issued under the Wetlands Protection Act.

Section 8. Regulations

After public notice and public hearing the Commission may promulgate 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.

Section 9. Definitions

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

- (a) The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town by-laws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.
- (b) The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this by-law:
 - (a) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
 - (b) Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
 - (c) Drainage or other disturbance 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 the 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;
- (c) The term "Commission" means the Canton Conservation Commission.
- (d) All other definitions as set forth in M.G.L., Chapter 131, Section 40 and Massachusetts Regulation 310 CMR issued by the Department of Environmental Quality Engineering are hereby made a part of this by-law.

Section 10. Security

As part of a permit issued under this by-law, 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;
- (b) 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.

Section 11. Enforcement

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 by-law, or in response to a request for a prior determination, 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.

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, 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 by-law, regulations, or permit violated shall constitute a separate offense.

In the alternative to criminal prosecution the Commission may elect to utilize the non-criminal disposition procedure set forth in M.G.L. Chapter, 40, Section 21D, or as it may be amended from time to time.

Section 12. 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 wetland values 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 a permit or grant a permit with conditions.

Section 13. Relation to the Wetlands Protection Act

This by-law is adopted under the Home Rule Amendment to the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and regulations thereunder.

Section 14. Severability

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.