

**ARTICLE 25****GENERAL WETLANDS PROTECTION BY-LAW**

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- Terminology for publication of notices is revised for consistency: “local newspaper” will be defined in Article 1 as “a newspaper of general circulation in the Town of Grafton and the Town of Grafton official website.”
- The requirement for public notice of a public hearing for adopting regulations is clarified.

**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 Grafton by prior review and control of 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 prevention, water pollution prevention, fisheries, shellfish, wildlife habitat, recreation, aesthetics, agriculture, and aquaculture values (collectively, the "wetland values protected by this by-law").

**SECTION 2. Jurisdiction.**

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 100 feet of any freshwater wetland vegetative wetland, marsh, wet meadow, bog or swamp; within 100 feet of any bank, beach or flat; any lake, river, pond, stream or estuary; within 100 feet of any lake, river, pond, stream or estuary; any land under said waters; or within 100 feet of any land subject to flooding or inundation by groundwater, surface water, tidal action, or storm flowage.

**SECTION 3. Exceptions.**

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, telephone, telegraph or other telecommunication services, 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 permit and application required by this by-law 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.

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 and 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 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 under this by-law.

#### **SECTION 4. Applications and Fees.**

Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by this bylaw. 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 bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the application and plans under this bylaw any application and plans filed under the Wetlands Protection Act (G.L. Ch. 131 s40) and Regulations (310 CMR 10.00).

Notwithstanding the aforesaid, such applications and plans shall be filed concurrently with any application for a special permit and/or site plan review for any project located on a priority development site designated as such by vote of Town Meeting under the provisions of GL c. 43D (T.M. 5/11/09)

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a Request for Determination of Applicability (RDA) shall include information and plans as are deemed necessary by the Commission.

At the time of an application, 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 and Regulations. Such filing fees shall be deposited in a municipal revolving fund established pursuant to G.L. Ch. 44 s53E1/2 for deposit and for uses set out in the vote establishing the fund. This account shall be kept separate from the account established for filing fees paid under the State Wetlands Protection Act.

The Commission may waive the filing fee and costs and expenses for a permit or other application or RDA filed by a government agency and shall waive them for an RDA filed by a person having no financial connection with the property which is the subject of the request. (S.T.M. 5/10/04)

#### **SECTION 5. Notice and Hearings**

a. **Request for Determination of Applicability (RDA).** Within 21 days of receipt of a completed Request for Determination of Applicability (RDA), the Commission shall review the request at a regular public meeting, unless an extension is authorized in writing by the applicant. Notice

of the time and place of the public meeting shall be given by the Commission, at the expense of the applicant, not less than five working days prior to the meeting, by publication in a ~~newspaper of general circulation in the municipality~~ local newspaper. The Commission shall issue its determination in writing within 21 days of the public meeting, unless an extension is authorized in writing by the applicant. When the person requesting a determination is other than the owner, the request, the notice of the meeting, and the determination shall be sent by the Commission to the owner as well as to the person making the request. (T.M. 5/10/89)

b. **Applications for Permit and Hearings.** Any person filing an application herein referred to with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested), certificate of mailing, 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 property line of the applicant, 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 hearing herein is other than the owner, the application, the notice of the hearing, and the permit 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 application referred to herein, 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~~ local newspaper.

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

The Commission shall issue its permit in writing within 21 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, Section 40.

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. (T.M. 5/10/89)

Notwithstanding the aforesaid, any public hearing on a permit application for work proposed on a priority development site designated as such by vote of Town Meeting under the provisions of G.L. c. 43D, shall normally be closed within 120 days. (T.M. 5/11/09)

## **SECTION 6. Coordination with other Boards.**

Following receipt of a completed application, the Commission shall execute the interdepartmental review process set forth in the regulations. The Commission shall not make a decision on the Wetlands Protection Bylaw Permit until it has received comments from the interdepartmental review process or until twenty (20) days have elapsed after receipt of the application materials without submission of comments thereon.

#### **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 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.

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 wetland values protected by this by-law; 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.

A permit shall expire three years from the date of issuance, except that, if not sooner exercised, a permit issued for activities to be undertaken on a priority development site designated as such by vote of Town Meeting under the provisions of GL c. 43D, shall expire five years from the date of the expiration of the appeal period set forth in Section 13 hereof. (T.M. 5/11/09) 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 a renewal is received in writing by the Commission prior to expiration.(T.M. 5/12/08).

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

The Commission in an appropriate case may combine the permit or other action on an application issued under this by-law 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 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.

#### **SECTION 8. Regulations.**

After ~~public notice and public hearing~~ a public hearing, notice of which shall be published in a local newspaper at least seven days prior to the hearing, the Commission shall 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.

At a minimum these regulations shall define key terms in this by-law not inconsistent with this by-law.

### **SECTION 9. Definitions.**

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

"**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 quasipublic corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

"**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 preexisting 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 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;

Except as otherwise provided 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, Section 40.

### **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 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 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 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 Select Board 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 bylaw, regulations, or permit violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Commission may elect to utilize the non-criminal disposition procedure set forth in Mass. G. L. c. 40, Section 21 D and amendments thereto which are incorporated by reference herein.

**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. Appeals.**

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

**SECTION 14. Relation to the 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, Section 40, and regulations thereunder.

**SECTION 15. 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.

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