

TOWN OF WALPOLE WETLAND PROTECTION BY-LAW

SECTION 1: Purpose

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

SECTION 2: Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon or alter protected resource areas as defined in Section 9.

SECTION 3: Exceptions

The permit and applications 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 the structure or facility is not substantially changed or enlarged, 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 adapted by the Commission.

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, the Commission, 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 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 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

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. Such activities shall not 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, the Notice of Intent and plans filed under the Wetlands Protection Act, M.G.L., Chapter 131, Section 40.

Any person desiring to know whether or not proposed activity on 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.

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 Wetlands Protection Act, M.G.L., c. 131, Sec. 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 \$2,500. 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 of Hearing

Any person filing an application or request for a determination with the Commission at the same time shall give written notice thereof, by certified mail or hand delivery, to all the abutters according to the most recent records of the assessors, including those across a traveled way or 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 free of charge. When a person requesting a determination is other than the owner, the request, the notice of the hearing and 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 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 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 21 days of the close of the public hearing thereon.

The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, M.G.L., c. 131, Section 40.

The Commission shall have authority to continue the hearing to a date 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 at 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 by the Commission and the Commission shall take action on such information as is available.

SECTION 6: Coordination with the 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 or hand delivery to the Town Board of Selectmen, Planning Board, Board of Appeals, Board of Health, Building Inspector, and the Town Engineer. The Commission shall take no final action until such boards and officials have had 14 days from the receipt of the 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 to 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 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.

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 specification, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent

unacceptable significant 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.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission, at 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.

For good cause, the Commission may revoke or modify a permit issued under this bylaw after public notice, 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 application issued under this bylaw with the Order of Conditions issued under the Wetlands Protection Act.

SECTION 8: Regulations

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purpose of this bylaw. 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.

SECTION 9: Definitions

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

Abutter - is any landowner, as determined by the most recent assessors' records, whose land abuts the property that is the subject of the Notice of Intent or whose land lies directly across any street, road, river, stream, brook or creek from the said property, or whose land is within 300 feet of the subject property.

Alter - shall include, without limitation, the following activities when undertaken to, upon, within or affecting 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 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 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 ground water.

Applicant - as used in these regulations, shall mean a person giving notice of intention to remove, fill, dredge, build upon, or alter, or a person on whose behalf such a notice is filed.

Bank - is defined as it is in 310 CMR 10.00.

Bog - See Marsh

Freshwater Wetland - is defined as it is in M.G.L. Chapter 131, Section 40.

Land Actively Devoted to Agricultural Use - is defined as it is in 310 CMR 10.00.

Land Subject to Flooding or Inundation - is defined as it is in 310 CMR 10.00

Normal Maintenance and Improvement - shall be defined as it is in 310 CMR 10.00.

Marsh, Bog, Wet Meadow and Swamp - are defined as they are in M.G.L. Chapter 131, Section 40, and are collectively known as vegetated wetlands. Credible evidence as to wetland affinities of other vegetation in an area shall be considered in making wetland determinations.

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 bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

Protected Resource Area - shall mean the following areas: any bank, freshwater wetland, marsh, bog, wet meadow, swamp, stream, river, pond, lake, vernal pool, or any land bordering thereon, or any land subject to flooding or inundation. Bordering in this context shall mean either (a) 100 feet horizontally lateral from any of the foregoing areas; or (b) 100 feet horizontally lateral from the water elevation of the 100 year storm, whichever is the greater of (a) or (b); and (c) land within 200 feet of the mean annual high-water line of any year round river or stream.

Swamp - See Marsh

Wet Meadow - See Marsh

SECTION 10: 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:

- (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 bylaw and make or cause to be made such examination surveys or sampling as the Commission deems necessary.

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. Upon request of the Commission, the City Council/Board of Selectmen and the City Solicitor/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 bylaw, regulations thereunder, or permits issued thereunder, shall be punished by a fine of not more than \$300 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.

In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in M.G.L. c. 40, Section 21D.

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 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 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, M.G.L., c. 131, Section 40, 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 which previously has been issued.