



## CONSERVATION COMMISSION BY LAWS

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April 10, 1995  
April 25, 1998  
November 17, 2003

# SEEKONK CONSERVATION COMMISSION

## GENERAL WETLANDS PROTECTION BYLAW

### 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 Seekonk 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 quality, water pollution prevention, fisheries, shellfish, wildlife habitat, rare species habitat including rare plant species, aesthetics, and agriculture, aquaculture, and recreation values deemed important to the community (collectively, the resource area values protected by this bylaw). This bylaw is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations thereunder (310 CMR 10.00). In addition to the more stringent protection noted above, this bylaw is intended to incorporate changes in the Wetlands Protection Act (G.L. Ch. 131 §40) and Regulations thereunder (310 CMR 10.00), as they may be amended from time to time.

### SECTION 2: *Jurisdiction*

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas: any freshwater wetland; isolated wetland; coastal wetland; marsh; wet meadow; bog swamp or vernal pool; bank; reservoir lake; pond of any size; river; stream or estuary; any land under said waters; land subject to flooding or inundation by groundwater, surface water, tidal action, or coastal storm flowage or flooding; and lands abutting any of the aforesaid resource areas as set out in Section 7. (Collectively the resource areas protected by this bylaw). Said resources shall be protected whether or not they border surface waters.

### SECTION 3: *Exceptions*

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, radio and television transmissions, 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 bylaw shall not be required for work performed for normal maintenance or improvement of land which is lawfully in agricultural use at the time, 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.

Land defined as in agricultural use must already be actively devoted to agricultural use, as opposed to the entire property, and must either have been in such use since before 1975 or have received

a permit for conversion to agriculture from the Conservation Commission to be subject to this exemption. Proposals to convert land to agricultural use must be reviewed by the Conservation Commission.

Land that has been brought within agricultural use after 1975 without having first been issued a permit by the Conservation Commission is not considered to be land that is lawfully already being used for agricultural purposes.

Agricultural land can be fallow for some time if it has been used for agriculture for at least three of the preceding five years.

Agricultural uses of land include:

- κ raising livestock,
- κ growing cranberries,
- κ growing other foods for human or animal consumption,
- κ raising sod, trees, nursery stock, and ornamental plants,
- κ forestry activities, where the land is managed for a continuous crop, and
- κ tree farming.

Only activities that constitute "normal maintenance or improvement" of existing agricultural land are exempt from regulation. Such activities include:

- κ plowing and tilling,
- κ pasturing of animals,
- κ using fertilizers, pesticides, and other chemicals in accordance with state and federal law,
- κ projects including ditches, drains, access roads, farm ponds, erosion control devices designed to improve drainage, increase access, and enhance productivity and efficiency of the agricultural operations,
- κ cultivating cranberries, provided that all activities are conducted in a way as to prevent erosion and siltation,
- κ cutting and removing trees for market of the trees or forest products, and
- κ selective cutting of trees for individual use by the owners. Tree cutting on land that is not agricultural land is not included. Normal maintenance or improvement must be related to ongoing uses, i.e., agricultural activity during the past five years.

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 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 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.

## **SECTION 4:** *Applications 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 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 the Notice of Intent and plans filed under the Wetland Protection Act, M.G.L. c. 131, §40 and Regulations (310CMR 10.00).

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

At the time of an application or request, the applicant shall pay a filing fee as required by the Wetlands Protection Act, M.G.L. c. 131, §40. The Commission may waive the filing fee and costs and expenses for an application or request filed by a government agency and may 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*

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 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. 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.

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.

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.

The Commission shall issue its permit or determination in writing with 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 the bylaw with the hearing conducted under the Wetlands Protection Act, M.G.L. c. 131, §40 and Regulations (310CMR 10.00).

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 list 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***

Any person filing a permit application or a Request for Determination with the Commission can be required to provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, and Building Inspector. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality, if the application or RFD pertains to property within 300 feet of that municipality. 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 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 or the land and water uses which will result therefrom are likely to have a significant or cumulative effect upon the resource area 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 shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

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 of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area 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.

Lands within 200 feet of rivers, ponds, and lakes, and lands within 100 feet of other resource areas listed in Section 2 are within the jurisdiction of the Seekonk Conservation Commission. These lands are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within the 200-foot [or 100-foot] area, unless the applicant convinces the Commission that the area or part of it maybe disturbed without harm to the values protected by the bylaw.

In the review of areas within 200 feet of rivers and streams, no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this bylaw, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed property use, overall project purpose (e.g. residential, institutional, commercial, or industrial purpose), logistics, existing technology, costs of the alternatives, and overall project costs.

To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

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 for a period of up to one year at the discretion of the Commission, provided that a request for a renewal is received in writing by the Commission 30 days prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

For good cause the Commission may revoke or modify a permit or determination issued under this bylaw after notice to the holder of the permit or determination, notice to the public, abutters, and town boards pursuant to Section 5, and Section 6, and a public hearing.

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 or Determination of Applicability issued under the Wetlands Protection Act (M.G.L. Ch. 131 §40) and Regulations (310CMR 10.00).

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, the 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 define key terms in this bylaw not inconsistent with this bylaw.

## SECTION 9: *Definitions*

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

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, 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;
- (k) Application of pesticides or herbicides.
- (l) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

The term "bank" shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

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

The term "pond (inland)" means any open body of fresh water of any size. Ponds may be either naturally occurring or man-made by impoundment, excavation, or otherwise. Ponds shall contain standing water except for periods of extended drought. For purposes of this definition, extended drought shall mean any period of four or more months during which the average rainfall for each month is 50% or less of the ten-year average for that same month.

Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds:

- (a) basins or lagoons which are part of wastewater treatment plants;
- (b) swimming pools or other impervious man-made basins; and
- (c) individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years.

The term "rare species" shall include, without limitation, all vertebrate and invertebrate animals and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

The term "vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

Except as 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, M.G.L. c. 131, §40 and Regulations (310CMR 10.00).

## **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, 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 covenants 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.

## **SECTION 11: *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, 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 samplings as the Commission deems necessary subject to the constitutions and laws of the United States and the Commonwealth.

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. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

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 bylaw, or regulations, permits or administrative orders issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues or unauthorized fill or other alteration remains in place shall constitute a separate offense, and each provision of the bylaw, regulations, or permit violated shall constitute a separate offense.

Non-criminal disposition - In addition to the procedures for enforcement as described above, the provisions of this general wetlands protection bylaw may also be enforced by non-criminal complaint pursuant to the provisions of M.G.L. c. 40, §21D, which has been adopted by the Town in Category 40 Enforcement of the General Bylaws. The enforcement agent shall be the Conservation Agent or a police officer. The penalty for violation of any provision of this bylaw shall be \$100 for the first offense; \$200 for the second offense and \$300 for the third and each subsequent offense.

Each day on which a violation exists shall be deemed to be a separate offense.

## **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 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 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 M.G.L., c. 249, §4.

## **SECTION 14: *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, §40, and Regulations (310 CMR 10.00) thereunder.

## **SECTION 15: *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.