

GENERAL WETLANDS PROTECTION

SECTION 6.1 PURPOSE

The purpose of this article is to protect the wetlands, related water resources and adjoining land areas in the Town of Needham by prior review and control of activities deemed by the Conservation Commission likely to have a significant 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, wildlife habitat, recreation, agriculture and aquaculture values (collectively, the "wetlands values protected by this article").

SECTION 6.2 JURISDICTION

Except as permitted by the Conservation Commission (hereinafter referred to as "the Commission") or as provided in this article, no person shall remove, fill, dredge, build upon or alter the following resource areas: (1) within 100 feet of any freshwater wetland, marsh, wet meadow, bog or swamp; (2) within 100 feet of any bank, beach, dune or flat; (3) any lake, river, pond or stream, whether or not intermittent; (4) within 100 feet of any lake, river, pond, stream or estuary; (5) any land under said waters; or (6) any land subject to flooding (collectively, the "resource areas").

SECTION 6.3 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, telephone, telegraph or other telecommunications 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 permit and application required by this article 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 at least 14 days prior to the commencement of work.

The permit and application required by this article shall not apply to emergency projects necessary for the protection of the health or safety of the public, as determined by the Commission, in such circumstances and upon such conditions as it deems appropriate, after advance written notice has been received by the Commission prior to commencement of any work, except for emergency response to safeguard life, health and property damage.

Other than stated in this section, the exceptions provided in the Wetlands Protection Act shall not apply under this article.

SECTION 6.4 APPLICATION FOR PERMITS AND REQUESTS FOR DETERMINATION

Written application to perform activities regulated by this article, affecting resource areas protected by this article, shall be filed with the Commission. 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 article.

The Commission shall accept as the application and plans under this article the Notice of Intent and plans filed under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, together with such other information as is required by this article and regulations issued hereunder.

Any person desiring to know whether or not a proposed activity or an area is subject to this article may in writing request 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 regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act, M.G.L. Chapter 131, Section 40. The Commission may waive or reduce the filing fee and costs and expenses for an application or request filed by a government agency or otherwise as the Commission may determine by its regulations.

SECTION 6.5 NOTICE OF HEARINGS

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

Any person filing an application or a request for determination with the Commission shall give written notice thereof, at the same time, 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. The applicant shall notify abutters in writing by hand delivery or certified mail, return receipt requested, or by certificates of mailing. If written notification is made by hand-delivery, the applicant shall obtain signatures at the time of delivery acknowledging receipt of said notification. 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. 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 at least five working days prior to the hearing, in a newspaper of general circulation in the Town.

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 within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

The Commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reason 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 6.6. 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 6.6 COORDINATION WITH 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 (return receipt requested) or hand delivery, to the Select Board, Planning Board, Board of Health and Building Inspector. 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 21 days from receipt of notice to file written comments and recommendations with 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 6.7 PERMITS, DETERMINATION 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 article, 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 article; 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 article; and where conditions are inadequate to protect those values. The Commission may require applicants to retain an independent consultant, acceptable in advance by the Commission, in order to provide the Commission with sufficient information on which to base a decision.

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. The Commission may renew any permit for one period of up to three years, provided that such request is received in writing by the Commission at least 30 days prior to the expiration of the permit.

The Commission may revoke or modify a permit issued under this article for good cause after notice to the holder of the permit, to the public, to abutters and to town boards pursuant to Section 6.5 and a public hearing.

The Commission, in an appropriate case, may combine the permit or other action on an application issued under this article 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 Norfolk Registry of Deeds or, if the land affected thereby is registered land, in the registry section of the land court for the Norfolk district, and until the holder of the permit certifies in writing to the Commission that the permit has been so recorded.

SECTION 6.8 REGULATIONS

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

SECTION 6.9 DEFINITIONS

Except as otherwise provided in regulations of the Commission, the definitions of terms in this article are those set forth in the Wetlands Protection Act, M.G.L. Chapter 131, Section 40 or regulations promulgated thereunder.

The following definitions shall apply in the interpretation and implementation of this article:

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.

The term alter shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this article:

- (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 expansion 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, including but not limited to, application of pesticides or herbicides.

SECTION 6.10 SECURITY

As part of any permit issued under this article and 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 any conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

- (a) By a proper bond, deposit of money, 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 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.

Upon written request of the applicant, the Commission shall release the covenant described in (b) above, or partially release said covenant with respect to particular lots, provided that:

1. No violation notice under this Article or enforcement order under M.G.L. Chapter 131, Section 40 has been recorded at the Norfolk County Registry of Deeds as of the date of the applicant's request; and
2. A proper bond or other undertaking of financial responsibility, as provided in (a) above, and sufficient in the opinion of the Commission, has been given to the Commission.

In the event that a bond or other undertaking has already been given, the Commission reserves the right to increase the amount of the bond or other undertaking of financial responsibility sufficient, in the opinion of the Commission, to secure completion of the work to be performed pursuant to the permit.

SECTION 6.11 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 article 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 article, its regulations and permits issued thereunder by violation notices, administrative 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 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.

Any person who violates any provision of this article, regulations thereunder or permits issued thereunder may be punished by a fine of not more than the maximum amount allowed under Chapter 40 of the Massachusetts General Laws. Each day or portion thereof during which a violation continues shall constitute a separate offense; and each provision of the article, regulations or permit violated shall constitute a separate offense.

SECTION 6.12 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 article. 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 6.13 APPEALS

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

SECTION 6.14 RELATION TO THE WETLANDS PROTECTION ACT

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

SECTION 6.15 EFFECTIVE DATE

The effective date of this article shall be September 1, 1988, and shall not be applicable to (a) work presently regulated by Orders of Condition issued by the Commission pursuant to the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and regulations thereunder, and (b) work that is the subject of Notices of Intent filed with the Commission prior to September 1, 1988, pursuant to the provisions of said Wetlands Protection Act.