

TOWN OF STOW
STOW, MASSACHUSETTS



WETLANDS PROTECTION
GENERAL BYLAWS ARTICLE 9

Adopted May 3, 1983

Last Amended May 19, 2004

ARTICLE 9. WETLANDS PROTECTION

SECTION 1. PURPOSE

The purpose of this Bylaw is to protect the wetlands, flood plains, water resources, and adjoining land areas of the Town of Stow by controlling activities deemed to have a significant effect upon the values of these resources, including but not limited to the following: public and private water supply, ground water, flood control, erosion and sedimentation control, storm damage prevention, water quality, soil and water pollution control, fisheries, shellfish, wildlife and wildlife habitat (wild plants and wild animals), rare species habitat including rare plant species, agriculture, aquaculture, and recreation (collectively, the “interests of 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 to augment those of the Wetlands Protection Act, G.L. Ch. 131, §40 and Regulations thereunder, 310 CMR 10.00.

(amended 5/21/03)

SECTION 2. APPLICATION

No person shall remove, fill, dredge, alter, degrade, pollute, discharge into, or build upon or within one hundred feet of any bank, fresh water wetland, beach, dune, flat, marsh, meadow, bog or swamp; or lands bordering on or within one hundred feet of any Great Pond, estuary, creek, intermittent stream, or any land under said waters; or lands bordering on or within two hundred feet of any perennial stream, river, pond (with the exception of Great Ponds as defined at 310 CMR 10.58 and historic mill complexes as defined at 310 CMR 10.04), lake, reservoir, vernal pool, or any land under said waters; or lands bordering on or within one hundred feet of any land subject to flooding or inundation by ground water or surface water; or lands bordering on or within one hundred feet of the one-hundred year flood elevation, without filing written application for a permit so to remove, fill, dredge, build upon, degrade, pollute, discharge into, or alter, including such plans as may be necessary to describe such proposed activity and its effect on the environment, and receiving and complying with a permit issued pursuant to this Bylaw.

The written application, accompanied by a filing fee as described by regulation, payable to the Town of Stow, shall be sent in a manner that provides proof of delivery to the Stow Conservation Commission. This same application shall fulfill the requirements of the Massachusetts General Laws, Chapter 131, §40. Copies of this application shall be sent at the same time, in a manner that provides proof of delivery, to the Board of Selectmen, Planning Board and Board of Health. Such application shall be filed concurrently with applications for all other variances and approvals required by the Zoning Bylaw, the Subdivision Control Law or any other Bylaw or regulation, or after such variances and approvals have been obtained.

Upon written request of any person to the Commission, the Commission shall within twenty-one (21) days make a written determination as to whether this Bylaw is applicable to any land or work thereon. When the person requesting a determination is other than the owner, notice of the determination shall be sent to the owner as well as to the requesting person. Where appropriate,

the Conservation Commission may conduct a public hearing on such a determination but is not required to do so. Notice of such a request for determination shall be sent to the abutters of record (as shown by the Assessors) where deemed necessary by the Commission.

(Section amended 5/21/03)

SECTION 3. HEARING

The Commission shall hold a public hearing on the application within twenty-one (21) days of its receipt. Notice of the time and place of the hearing shall be given by the Commission, at the expense of the applicant, not less than five (5) days prior to the hearing, by publication in a newspaper of general circulation in Stow and by mailing copies of the notice to the applicant, Board of Health, Board of Selectmen, Planning Board, abutters as shown by the Assessors and to such other persons as the Commission may determine. *(amended 5/21/03)*

SECTION 3.1 PERMIT AND CONDITIONS

If after the public hearing the Commission determines that the area, which is the subject of the application, is significant to the interests protected by this Bylaw, the Commission shall within twenty-one (21) days of such hearing issue or deny a permit for the work requested. If it issues a permit after making such determination, the Commission shall impose such conditions as it determines are necessary or desirable for protection of those interests, and all work shall be done in accordance with those conditions. The conditions may include a condition that certain land or portions thereof not be built upon or altered, filled or dredged, that streams may not be diverted, dammed or otherwise disturbed. If the Commission determines that the area which is the subject of the application is not significant to the interests protected by this Bylaw, or that the proposed activity does not require the imposition of conditions, within twenty-one (21) days of the public hearing it shall issue a permit without conditions. Permits shall expire three (3) years from the date of issuance, unless renewal is sought by written application prior to the date of expiration. *(amended 5/21/03)*

SECTION 3.2 RELATIONSHIP TO MASS. GENERAL LAWS CH. 131, S. 40

The Conservation Commission may authorize a Notice of Intent under this bylaw to suffice for an application under Mass. General Laws, Chapter 131, Section 40, and where appropriate may conduct a single public hearing under this bylaw and that act, and may issue one Order of Conditions thereunder.

SECTION 4. PRE-ACQUISITION VIOLATION

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this bylaw or in violation of any permit issued pursuant to

this bylaw shall forthwith comply with any such order or restore such land to its condition prior to any such violation.

SECTION 5. REGULATIONS

The Conservation Commission may promulgate, after due notice and public hearing, rules and regulations to effectuate the purpose of this bylaw. However, 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.

The Commission may in its rules and regulations provide such definitions of terms used in this bylaw as it deems useful in order to carry out its obligations under this bylaw.

SECTION 6. BURDEN OF PROOF

The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will contribute to the interests protected by this Bylaw. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will contribute to the interests protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or, in the Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence. Due consideration shall be given to any demonstrated hardship of the petitioner by reason of a denial, as brought forth at the public hearing. *(amended 5/21/03)*

SECTION 7. DEFINITIONS

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

SECTION 7.1. PERSON

The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth of political subdivision thereof to the extent subject to town bylaws, administrative agencies, public or quasi-public corporations or bodies, the Town of Stow, and any other legal entity, its legal representatives, agents or assigns.

SECTION 7.2. ALTER

The term "alter" shall include, without limitation, the following actions when undertaken in areas subject to this Bylaw:

- a. Removal, excavation or dredging of soil, sand, gravel, peat or aggregate materials of any kind;
- b. Changing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, and flood retention characteristics;
- c. Drainage or other disturbance of water level or water table;
- d. Dumping, discharging or filling with any material that may degrade water quality;
- e. Placement or removal of material, which would alter elevation;
- f. Driving of piles, erection of buildings or structures of any kind;
- g. Placing of obstructions whether or not they interfere with the flow of water;
- h. Destruction of plant life, including cutting of trees;
- i. Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water;
- j. Any activities, changes or work that pollutes a stream or body of water, whether or not said stream or body of water is located within the Town of Stow;
- k. Incremental activities, which have, or may have, a cumulative adverse impact on the resource areas protected by this Bylaw.

(Section 7.2 amended 5/19/04)

SECTION 7.3. BANKS

The term "bank" shall include the land area which normally abuts and confines a water boundary; 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.

(amended 5/21/03)

SECTION 7.4. AGRICULTURAL PRACTICES

- a. The term "land in agricultural use" shall mean any qualifying wetland within a farm which is qualified or eligible to be qualified under the Farmland Assessment Act, Mass. General Laws, Chapter 61A, Sections 1 through 5, including but not limited to land primarily used in the raising of animals, the raising of plants for human or animal feed, the production of flowers, trees, nursery and greenhouse products, or ornamental plants and shrubs, or any combination thereof.

- b. The term "qualifying wetland" shall mean only inland fresh water wetland areas, which are seasonally, flooded basins or flats or inland fresh water meadows.
- c. The term "normal maintenance" of land in agricultural use shall mean only
 - (1) Tilling and/or harvesting practices customarily employed in the raising of crops.
 - (2) Pasturing of animals, including such fences and protective structures as may be required.
 - (3) Use of fertilizers, pesticides, herbicides and similar materials subject to all state and federal regulations covering their use.

(Section 7.4.c amended 5/19/04)

SECTION 8. SECURITY

The Conservation Commission may, as part of its conditions, require in addition to any security required by any other town or state board, commission, agency or officer that the performance and observance of the conditions imposed hereunder be secured by one, or in part by one and in part by the other, of the methods described in the following:

- a. By a bond or deposit of money or negotiable securities in an amount determined by the Commission to be sufficient and payable to the Town of Stow.
- b. By a conservation restriction, easement or other covenant, executed and duly recorded by the owner of record, running with the land (or registered, in the case of registered land).

The amount of security required by this Commission shall not, however, exceed either the estimated cost of the work required to secure the faithful and satisfactory compliance with the final Order of Conditions or the estimated cost of the work required to restore the resources and other properties that may be affected if the work is not performed as required, whichever is greater.

SECTION 9. ENFORCEMENT

The Conservation Commission shall have authority to issue administrative orders for the purpose of enforcing this bylaw and regulations and permits thereunder.

Whoever violates any provision of this Bylaw shall be punished by a fine of not more than \$300.00 or such other amount as may be provided by State statute. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each permit condition violated shall constitute a separate offense.

This bylaw shall be enforced pursuant to Mass. General Laws Chapter 40, Section 21D by a town police officer or other officer having police powers. Upon request of the Commission, the Board of Selectmen and Town Counsel shall initiate appropriate legal action or injunctive relief in Superior Court as may be necessary to enforce this bylaw and permits issued pursuant to it.

The Commission, its agents, officers and employees may enter upon publicly or privately owned land for the purpose of performing their duties under this bylaw.

(amended 5/19/04)

SECTION 10. EMERGENCY PROJECTS

The Conservation Commission may exempt emergency projects as described by rules and regulations.

SECTION 11. 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 Order of Conditions, which has previously become final.

(Article 9 adopted 5/3/83)