

ARTICLE 22

WETLANDS PROTECTION BY-LAW

SECTION 1 - Purpose and Protectable Resources

The purpose of this By-law is to protect the foreshores, wetlands, and groundwater supply of the Town of Hingham by controlling activities deemed to have a significant effect on wetland and water quality values, including, but not limited to, the following:

Public or private water supply, groundwater, flood control, erosion control, storm damage, water pollution, fisheries, shellfish, wildlife, recreation and aesthetics. No person shall remove, fill, dredge, or alter any bank, freshwater wetland, coastal wetland, beach, dune, bog, flat, marsh, meadow, vernal pools or swamp, or any estuary, creek, river, stream, pond, lake, or the ocean, or the land under or bordering on said waters or wetlands, or any land subject to tidal action, coastal storm flowage, or flooding, or Riverfront Area without first filing written notice of such person's intention to so remove, fill, dredge, or alter by sending a separate letter, by certified mail, or by hand delivery to the Hingham Conservation Commission (hereinafter referred to as the "Commission") or its authorized agent, and without receiving and complying with an Order of Conditions, and provided all appeal periods have lapsed. Such Notice of Intent shall include such plans as required, from time to time, by the Commission and as may be necessary to describe such proposed activity and its effect on the environment. The same plans and specifications required to be filed by an applicant under Massachusetts General Laws, Chapter 131, Section 40, will be accepted as fulfilling the requirements of this By-law.

The Commission may hear any oral presentation under this By-law at the same public hearing required to be held under the provision of said Chapter 131, Section 40 of the Massachusetts General Laws. Definitions set forth in said Chapter and section of the General Laws and in the regulations issued, as amended from time to time, by the Department of Environmental Protection, or any successor thereto, are hereby made a part of this By-law. The Commission may, from time to time, adopt such additional definitions, regulations, and performance standards as it may deem necessary to further the purpose and protect the interests of this By-law. Said definitions shall become effective upon publication following a public hearing.

This Article 22 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, M.G.L. Chapter 131, Section 40 and regulations thereunder, 310 CMR 10.00. Activities that may not require review or permitting under the Wetlands Protection Act, the Rivers Protection Act, or other federal, state or local statutes are not assumed to be exempt from this By-law.

SECTION 2 - Regulated Activities

2A. Except as permitted by the Commission or as otherwise provided in this By-law, no person shall remove, fill, dredge, alter or build upon or within one hundred (100) feet of any resource area, as outlined in Section 1 of this By-law, or within the two-hundred (200) foot Riverfront Area, as defined in 310 CMR Section 10.58. The provisions of this By-law shall not apply to any removing, filling, dredging, or altering necessary in the course of maintaining or repairing, or replacing, but not substantially changing or enlarging, an existing lawfully located structure or facility used in the service of the public to provide electric, gas, sewer, water, telephone or telecommunication services. Any removal, filling, dredging or altering authorized by this section

2A shall be subject to best management practices for sediment and erosion control.

2B. Except as authorized by the Commission, no activity or alteration shall be permitted within a fifty (50) foot buffer strip between any wetland resource , bordering vegetated wetland, coastal dune or bank, and/or isolated vegetated wetland and any proposed site disturbance. Prohibited activities shall include, but are not limited to, the following: (1) new construction of any buildings, decks, in-ground and above-ground swimming pools, sheds and/or driveways of any nature or type (excepting water dependent structures expressly approved by the Commission); (2) alteration, reconstruction or relocation of existing buildings, sheds and/or driveways of any nature or type; and (3) activities which involve or result in the removal, filling or altering of land within the buffer strip, including vegetation removal and grading. Nothing herein shall preclude the maintenance of an existing, lawfully constructed structure located within the buffer zone. The Commission may allow the prohibited activities upon an express determination that the applicant has made a clear and convincing showing that the proposed work in the buffer strip and its natural and consequential impact and effects will not adversely affect the wetland values of this By-law.

2C. Except as authorized by the Commission, no activity or alteration shall be permitted within one hundred (100) feet of a vernal pool, whether it be certified or uncertified but accompanied by credible evidence of its viability as a vernal pool. The one hundred (100) feet around the defined vernal pool boundaries shall be known as "Vernal Pool Protection Zone".

Isolated Vegetated Wetlands, Isolated Land Subject to Flooding, and the adjacent one hundred (100) feet surrounding these depressions are protected under the Hingham Wetlands Protection By-law. Vernal Pool Habitat is defined as confined basin depressions which, at least in most years, hold water for a minimum of two (2) continuous months during the spring and/or summer, and which are free of adult fish populations, as well as the area within one hundred (100) feet of the mean annual boundaries of such depressions.

SECTION 3 - Definitions

The term "person" as used in this By-law shall include any individual, group of individuals, association, partnership, corporation, company, business, organization, trust, estate, the Commonwealth or political subdivision thereof, administrative agency, public or quasi-public corporation or body, or any other legal entity or its legal representatives, agents or assigns.

SECTION 4A - Request for Determination

The Commission may make a determination as to whether or not this By-law applies to a specific situation prior to the filing of a written Notice of Intent under the provisions hereof within twenty-one (21) days of the receipt of a written request by certified mail, or by hand, from any person desiring such a determination. The Commission, its agents, officers, and employees, may enter upon the land on which the proposed work is to be done in response to a Request for Determination, or for the purpose of carrying out its duties under this By-law, and make, or cause to be made, such examination or survey as it deems necessary.

SECTION 4B - Notice of Intent

The same Notice of Intent, plans and specifications required to be filed by an applicant under Massachusetts General Laws, Chapter 131, Section 40, will be accepted as fulfilling the filing requirements of the By-law. Within twenty-one (21) days after receiving a Notice of Intent, the Commission shall hold a public hearing on the proposed activity. Notice of the date, time and place of said hearing shall be given by the Commission at the expense of the applicant not less

than five (5) days prior to such hearing by publication in a newspaper of general circulation in the Town and by mailing a notice to the applicant by mail. The applicant may be present at said hearing and may be represented by counsel and shall be entitled to present evidence, call witnesses, and question any witnesses appearing at the hearing. The Commission shall make and keep a record of its proceedings and, upon request, shall furnish copies at reasonable cost. Said hearing shall be conducted simultaneously with the public hearing required to be held under the provisions of said Chapter 131, Section 40, and in conformity with said regulations promulgated by the Department of Environmental Protection. The Commission, its agents, officers, and employees, may enter upon the land on which the proposed work is to be done in response to a Request for Determination, or for the purpose of carrying out its duties under this By-Law, and make, or cause to be made, such examination or survey as it deems necessary.

SECTION 5 - Authorization of Commission To Deny Project

The Commission is empowered to deny permission for any removal, dredging, filling or altering on subject lands within the Town if, in its judgment, such denial is necessary to preserve the environmental quality and to protect the wetland and water quality values of either or both the subject lands and contiguous lands. Due consideration shall be given to possible effects of the proposal on all values to be protected under this By-law and to any demonstrated hardship on the petitioner by reason of a denial, as brought forth at the public hearing.

SECTION 6 - Issuance of an Order of Conditions

The Commission may, as an alternative to denial, impose such conditions as it deems necessary to contribute to said protection and preservation of subject and contiguous lands in accordance with the purpose of this By-law and may issue an Order of Conditions. Any Order of Conditions issued under this By-law shall be considered a "permit obtainable by local by-law", as defined in Massachusetts General Laws, Chapter 131, Section 40 and its regulations.

SECTION 7A - Emergency Work and Other Exemptions

Notice required by Section 1 of this By-law shall not apply to emergency projects necessary for the protection of the health or safety of the citizens of the Commonwealth and to be performed or ordered to be performed by an agency of the Commonwealth of Massachusetts or of the Town. An emergency project shall mean any project certified to be an emergency by the Commission or its authorized agent. If the Commission or its authorized agent, as the case may be, fails to act within twenty-four (24) hours of receipt of a Request for Certification of an emergency project, said project may be certified by the Hingham Select Board or its authorized agent. In no case shall any removal, filling, dredging, or altering commence prior to any emergency certification nor extend beyond the time necessary to abate the emergency.

SECTION 7B - Filing Fees

The Commission is authorized to establish filing fees to defray costs incurred in conducting hearings under the Wetlands Protection By-law and to adopt rules and regulations regarding the establishment and collection of such fees. Such rules and regulations may be adopted or amended at any regularly scheduled meeting of the Commission subject to the approval of the Select Board. Upon such approval they shall be published once in a newspaper of general circulation in the Town, shall thereafter be posted for seven consecutive days in five conspicuous places, and shall become effective upon the expiration of said seven (7) days.

The Commission may waive fees when an application fee for a permit, filing, or request for determination or applicability or other application is made by a government agency, municipality

or not-for-profit organization.

SECTION 8 - Establishment of Surety Bonds

The Commission may require the posting of security, running to the Town, including, without limitation, a letter of credit, cash, and bond with surety, in such form and amount and with such conditions as may be determined in the sole opinion of the Commission, after recommendation by its Town Counsel. Such security shall secure faithful and satisfactory performance on work required by any final "Order of Conditions", but shall not be an amount greater than the estimated cost of the work required for the restoration of affected lands and properties if the work is not performed as required.

The Commission may also consider a Conservation Restriction, easement or other covenant enforceable in a court of law as a way to secure adherence to conditions imposed by the Commission. Such covenant shall be executed and duly recorded by the owner of record, running with the land to the benefit of the Town, 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 9 - Entry to Property for Review Purposes

The Commission, its agents, officers and employees shall have the authority to enter upon privately owned land pursuant to warrant, court procedure, or another appropriate administrative order for the purpose of performing their duties under the by-law and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.

SECTION 10 - Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application and depicted on the plans will not have unacceptable significant or cumulative effect upon the wetland values protected by this Article 22.

SECTION 11A - Establishment of Enforcement Authority

The Commission shall have the authority to enforce this By-law, its regulations, and permits issued thereunder by enforcement orders, violation notices, administrative orders, and civil and criminal court actions. Upon request of the Commission to, and with the approval of, the Select Board, the Town Counsel may take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law.

SECTION 11B - Establishment of Fines

Any person including, but not limited to, the property owner, landscaper, contractors and tree cutting services, who violates any provision of this By-law, its regulations or any conditions of a permit issued pursuant to it shall be punished by a fine which shall be set by the Commission. The fine shall be one hundred dollars (\$100) per violation. Each day or portion thereof during which a violation continues shall constitute a separate violation and each By-law, regulation or permit violated shall constitute a separate offense. A Hingham police officer or the Conservation Commission or its agent may enforce this By-law by noncriminal complaint pursuant to M.G.L. Chapter 40, Section 21D. Upon request by the Commission, the Select Board and Town Counsel shall take such legal action as may be necessary to enforce this By-law and permits issued pursuant to it.

SECTION 11C - Show-Cause Hearings

The Commission may require a Wetlands By-law violator to attend a "Show-Cause" Hearing at a scheduled time and date certain if, in the Commission's judgment, the violator has failed to respond to an Enforcement Order, cooperate with the Commission's request for remedial actions or take required steps necessary for ensuring protection of the resources and associated buffer zones in a timely manner.

SECTION 12 - Severability

Should any section or provision of this By-Law be found invalid, the validity of any other section or provision thereof shall not be affected, nor shall it invalidate any permit, approval or determination which previously has been issued.