

## **ARTICLE 44. WETLANDS PROTECTION**

(New Section ATM 2002.)

44.1. Purpose. The purpose of this bylaw is to protect the wetlands, related water resources, and adjoining land areas in the Town by prior review and control of activities deemed by the Wetlands Protection Committee likely to have a significant or cumulative effect upon wetland interests and 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, and recreation (collectively, the "wetlands values protected by this bylaw").

44.2. Jurisdiction. Except as permitted by the Wetlands Protection Committee or as provided in this bylaw, no person shall remove, fill, dredge, build upon, or alter any of the following resource areas; marshes; wet meadows; bogs; swamps; banks; reservoirs; lakes; ponds; rivers; streams; creeks; lands under reservoirs, lakes, ponds, rivers, creeks or streams; any wetlands bordering on any of the aforesaid resource areas; isolated wetlands so long as they cover at least 2,500 square feet of surface area; land within 100 feet of the aforesaid resource areas; vernal pool habitats; lands within 200 feet of perennial streams or rivers; bordering land subject to flooding; or isolated land subject to flooding.

44.3. Definitions. Except as otherwise provided in this bylaw or in regulations of the Committee, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act, G.L. c. 131, § 40, as amended, or regulations promulgated thereunder.

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

- a. "Stream" means an open body of running water, including brooks and creeks, which moves in a definite channel, natural or man-made, in the ground due to a hydraulic gradient, year-round or intermittent. Such bodies of running water which are intermittent (do not flow throughout the year) are streams, except for those that serve only to carry the immediate surface runoff from stormwater or snowmelt. A portion of a stream may flow through a culvert or beneath a bridge.
- b. "Vernal pool habitat" means confined basin depressions which, at least in most years, hold water for a minimum of two continuous months during the spring or summer, and which are free of adult fish populations. This includes the area within 100 feet of the mean annual boundaries of such depressions. Such areas need not lie within other resource areas subject to this bylaw to be protectable hereby. These areas are essential breeding habitat and provide other extremely important wildlife habitat functions during non-breeding seasons as well as for a variety of amphibian species.

44.4. Exemptions. 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 telecommunication services, provided that written notice has been given to the Committee 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 Committee.

The provisions of this bylaw shall not apply to any work performed for normal maintenance or improvement of land in agricultural use or in aqua cultural use.

The application and permit required by this bylaw shall not be required for emergency projects necessary for the protection of the health and 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 Committee prior to commencement of work or within 24 hours after commencement; provided that the Committee or its agent, in writing, certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Committee 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 Committee for review as provided by this bylaw. Upon failure to meet these and other requirements of the Committee, the Committee may, after notice and a 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 under this article.

44.5. Application for Permits and Requests for Determination. Written application shall be filed with the Committee to perform activities regulated by this bylaw affecting resource areas protected by this bylaw. This application shall include such information and plans as are deemed necessary by the Committee to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit pursuant to this bylaw.

The Committee shall accept as the application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act, G.L. c. 131, § 40, as amended, together with such other information and plans as is required by this bylaw and regulations issued hereunder.

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 Committee. The Committee shall accept a Request for Determination of Applicability under the Wetlands Protection Act as a request under this bylaw. Such a request for determination shall contain information and plans specified by the regulations of the Committee.

Any person desiring to certify, for purposes of this bylaw, the limits of resource areas on a site may file a request for wetland delineation. This application shall include such information and plans as are deemed necessary by the Committee to describe and define the wetland resource areas. The Committee shall accept a Notice of Resource Area Delineation under the Wetlands Protection Act as a similar request under this bylaw.

At the time of an application request, the applicant shall pay a filing fee specified in regulations of the Committee. This fee is in addition to that required by the Wetlands Protection Act. The Committee, upon written request, may waive the filing fee for an application or request filed by a government agency.

The Committee may, at the expense of the applicant, retain an independent consultant for the purpose of providing the Committee with the data, analysis, or other information deemed by the Committee to be reasonably necessary or appropriate to assist the Committee in reviewing the application or rendering its decision, in conformity with the provisions of G.L. c. 44.

44.6. Notice of Hearings. When appropriate, the Committee may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, G.L. c. 131, § 40, as amended.

Any person filing an application with the Committee for a permit or for resource area delineation certification 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 site of the project or wetland, including any in another municipality or across a 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. When a person requesting a determination is other than the owner, the notice of the hearing shall be sent by the Committee to the owner as well as to the person making the request.

The Committee 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 Committee shall commence the public hearing within 21 days from the receipt of a completed application or request for determination unless an extension is authorized in writing by the applicant. The hearing under the bylaw may be continued in the same manner and conditions as under the Wetlands Protection Act and regulations. (*Amended ATM 2018.*)

The Committee shall issue its permit, its denial of a permit, or its determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

44.7. Permits, Determinations, and Conditions. If the Committee 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 bylaw, the Committee shall issue or deny a permit for the activities requested. If it issues a permit, the Committee shall impose conditions which the Committee deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

The Committee 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 Committee; for failure to meet the performance standards and other requirements in this bylaw and the regulations issued hereunder, for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this bylaw, and where no conditions are adequate to protect those values.

A permit shall expire three years from the date of issuance. The Committee may extend a permit for one or more periods of up to three years each, upon written request made at least 30 days prior to the expiration of the permit.

For good cause the Committee may revoke or modify a permit issued under this bylaw.

The Committee 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.

No work proposed in any application shall be undertaken until the permit issued by the Committee with respect to such work has been recorded in the Norfolk Registry of Deeds or, if the land affected thereby be 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 Committee that the permit has been so recorded.

44.8. Regulations. After public notice and public hearing, the Committee shall promulgate rules and regulations to affect the purposes of this bylaw. Failure by the Committee 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 when promulgated shall define key terms in this bylaw not inconsistent with this bylaw.

44.9. Security. As a 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 Committee 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:

By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Committee, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit;

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 the 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.

44.10. 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 Committee shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, enforcement orders, and civil and criminal court actions.

Upon request of the Committee, Town Counsel shall take legal action for enforcement under civil law. Upon request of the Committee, the Chief of Police and/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 Committee in enforcement.

Whoever violates any provision of this bylaw, regulations hereunder, or permits issued hereunder, 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.

As an alternative to criminal prosecution in a specific case, the Committee may issue citations under the non-criminal disposition procedure set forth in G.L. c. 40§ 21D, as amended, which has been adopted by the Town in Article 52.

44.11. 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 Committee supporting this burden shall be sufficient cause for the Committee to deny a permit or grant a permit with conditions.

44.12. Appeals. A decision of the Committee shall be reviewable in the Superior Court in an action filed within 60 days thereof, in accordance with G.L. c. 249, § 4, as amended.

44.13. 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, G.L. c. 131, § 40, as amended, and regulations thereunder.

44.14. 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 previously issued.