

[HISTORY: Adopted by the Annual Town Meeting of the Town of North Reading 4\_30\_1992 by Art. 19, approved 8\_6\_1992. Amendments noted where applicable.]

#### GENERAL REFERENCES

Zoning \_\_ See Ch. 200.  
Site plan review \_\_ See Ch. 340.  
Subdivision of land \_\_ See Ch. 350.

~ 196\_1. Purpose.

The purpose of this bylaw is to protect the wetlands, related water resources, and adjoining land areas in the Town of North Reading by prior review and control of activities deemed by the Conservation Commission (the Commission) 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 pollution control, fisheries, shellfish, wildlife habitat, recreation, aesthetics, agriculture, and aquaculture (collectively, the "resource area values protected by this bylaw").

~ 196\_2. Jurisdiction.

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, degrade, or alter the following resource areas: any freshwater wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; rivers; streams; creeks; beaches; dunes; estuaries; flats; land under water bodies; lands subject to flooding or inundation by groundwater, surface water or tidal action; and lands within 100 feet of any of the aforesaid resource areas (collectively the "resource areas protected by this bylaw").

~ 196\_3. Exceptions.

A. Public service facilities. 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 provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to the performance standards and design specifications in the regulations adopted by the Commission.

B. Agricultural use. The permit and application required by this bylaw shall not be required for work performed for normal maintenance or improvement of land in agricultural use or in aquacultural use, provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

C. Emergency work. The permit and application required by the 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 notice, oral or written, has been given to the Commission prior to or within 24 hours after commencement of the work, 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 any emergency project a permit application shall be filed with the Commission for review as provided in this bylaw or, if the person performing the emergency work is the Town of

North Reading, a written certification from the Town Engineer stating that all work performed conformed to the performance standards and design specifications in the regulations adopted by the Commission. 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.

D. Previously authorized work. The permit and application required by this bylaw shall not apply to any work which, prior to the effective date of this bylaw, had been authorized by all required orders of conditions under Massachusetts General Laws, Chapter 131, Section 40, and special permits under the former Section 9.4 of the Zoning Bylaw, provided that such work is performed in accordance with the terms of said orders and special permits, including any amendment or extension of said orders and special permits as may be granted by the issuing authority.

E. Other exceptions. Other than stated in this section, the exceptions provided in the Wetlands Protection Act, MGL c. 131, ~ 40, and regulations, 310 CMR 10.00, shall not apply under this bylaw.

~ 196\_4. Applications for permits and requests for determination.

A. Applications for permits.

(1) Written application shall be filed with the Commission to perform activities affecting resource areas protected by this bylaw.

(2) The permit 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 activity shall commence without receiving and complying with a permit issued pursuant to this bylaw. The Commission in an appropriate case may accept as the permit application and plans under this bylaw the notice of intent and plans filed under the Wetlands Protection Act, MGL c. 131, ~ 40, and regulations, 310 CMR 10.00.

B. Requests for determination. Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a request for determination shall contain information and plans as are deemed necessary by the Commission.

C. Fees.

(1) At the time of a permit application or request for determination, the applicant shall pay a filing fee as approved by the Board of Selectmen and specified in the regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act, MGL c. 131, ~ 40, and regulations, 310 CMR 10.00.

(2) In addition to the filing fee, the Commission shall require the applicant to pay the reasonable costs and expenses of any expert consultant deemed necessary by the Commission to review the application or request for determination. The applicant shall have the right to make recommendations concerning the choice of expert consultant to be used. The specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, including wildlife habitat evaluations, hydrogeologic and drainage analysis, environmental or land use law, field inspections and monitoring of work permitted by the Commission under this bylaw. Payment for consultant services shall be made to the Town of North Reading prior to the issuance of a final decision by the Commission. Funds collected under this provision shall be placed in a consultant services account of the Commission, and shall be immediately paid to the consultant for specific consultant services rendered. The phrase "necessary services" shall mean any services beyond the initial review and evaluation of a permit application or a request for determination.

(3) The Commission shall return any unused portion of any payment made for consultant services to the applicant unless the Commission decides at a public meeting that other action is necessary. Any applicant aggrieved by the imposition of, or size of, the payment for consultant services, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws. The Commission may waive the filing fee or costs or expenses for a permit application or request for determination filed by a government agency or for a request for determination filed by a person having no financial connection with the property which is the subject of the request.

(4) Failure to submit required fees, costs or expenses shall constitute an incomplete filing and shall be considered cause for denial.

~ 196\_5. Notice and hearings.

A. Notice. Any person filing a permit application or a request for determination with the Commission subsequent to acceptance shall give written notice thereof, by certified mail (return receipt requested) to all abutters at their mailing addresses as 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 state where copies of the application, including plans and calculations, may be examined and obtained by abutters. 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 to the owner as well as to the person making the request.

B. Public hearing.

(1) The Commission shall conduct a public hearing on any permit application or request for determination, with written notice given at the expense of the applicant, five days prior to the hearing, in a newspaper of general circulation in North Reading.

(2) 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.

(3) 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.

(4) The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, MGL c. 131, ~ 40, and regulations, 310 CMR 10.00.

(5) 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, 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 ~ 196\_6. In the event that 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.

~ 196\_6. Coordination with other boards.

Any person filing a permit application or a request for determination with the Commission shall provide copies to be delivered by the Conservation Commission to the Community Planning Commission, Board of Appeals, Board of Health, Building Inspector and

Town Engineer. 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.

~ 196\_7. Permits, determinations and conditions.

A. Granting of permit. 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 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 may impose conditions, which the Commission deems necessary to protect those values, and all activities shall be done in accordance with those conditions.

B. Denial of permit. 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 submit required fees, costs or expenses; 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.

C. Expiration of permit. A permit shall expire three years from the date of issuance. Any permit may be renewed once for an additional one year period, provided that a request for a renewal is received in writing by the Commission not less than one month prior to expiration.

D. Revocation or modification of permit. 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, notice to the public, abutters, and town boards pursuant to ~ 196\_5 and 196\_6 and a public hearing.

E. Relationship to order of conditions. The Commission in an appropriate case may incorporate the order of conditions or determination of applicability issued under the Wetlands Protection Act, MGL c. 131, ~ 40, and regulations, 310 CMR 10.00, into a permit or determination issued under this bylaw.

F. Recording of permit. 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 is registered land, in the registry section of the land court for the district wherein the land lies, and until the Commission receives a copy of the recorded permit bearing the recording information on the permit.

~ 196\_8. Rules and regulations.

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

~ 196\_9. Definitions.

A. The following definitions shall apply in the interpretation and

implementation of this bylaw.

(1) 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.

(2) 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 preexisting 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 exterior 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 any waters;
- (j) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater; and
- (k) Application of pesticides or herbicides.

(3) The term "land subject to flooding" shall include both isolated land subject to flooding and bordering land subject to flooding as set forth in the Wetlands Protection Act, MGL c. 131, ~ 40, and regulations, 310 CMR 10.00.

B. Except as otherwise provided in regulations of the Commission, the definitions of terms in this bylaw shall be as set forth in the Wetlands Protection Act, MGL c. 131, ~ 40, and regulations, 310 CMR 10.00.

~ 196\_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 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.

~ 196\_11. Enforcement; violations and penalties.

A. General. No person shall remove, fill, dredge, build upon, degrade or alter the resource areas protected by this bylaw, or cause, suffer, or allow such activity to continue or allow such fill or other alteration to be left in place, without the required authorization pursuant to this bylaw.

B. Right of entry. The Commission or its agent(s) 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 sampling as the Commission deems necessary. Prior to entry upon any privately owned land, the Commission shall send notice, mailed or delivered to the current owner of the land in question stating when the Commission intends to inspect the land, the reasons and purpose for entering upon the land and any violations reported to the Commission. The owner of the land has the right to be present at any or all such entries and may refuse entry by the Commission or its agent(s) either verbally or in writing at any point during the inspection process.

C. Enforcement actions.

(1) 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 any provision of this bylaw may be ordered to restore the property to its original condition or take other action deemed necessary to remedy such violation.

(2) Upon request of the Commission, the Board of Selectmen and Town Counsel may take legal action for enforcement under civil law. Upon request of the Commission, the Board of Selectmen may order the Chief of Police to take legal action for enforcement under criminal law.

(3) Town boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

D. Fines. Whoever violates any provision of this bylaw, or regulations, permits, or administrative orders issued thereunder, shall be subject to the following penalties: first offense: \$25; second offense: \$100; third and subsequent offenses: \$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. As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the noncriminal disposition procedure set forth in MGL c. 40, ~ 21D, and adopted by the Town as a general bylaw. [Amended 10\_2\_2000 ATM by Art. 15, approved 3\_29\_2001]

~ 196\_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 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.

~ 196\_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 MGL c. 249, ~ 4.

~ 196\_14. Relation to 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, MGL c. 131, ~ 40, and regulations 310 CMR 10.00 thereunder.

~ 196\_15. Severability.

The invalidity of any section or provisions 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.