

SOUTHBOROUGH WETLANDS BY-LAW

First Draft 1/2/92, (last revised 2/22/95)

Approved at Annual Town Meeting of April 10, 1995 (Article #48)

CHAPTER 170-

1. PURPOSE

The purpose of this chapter is to protect the wetland related water resources and the adjoining land areas in the Town of Southborough by controlling activities deemed by the Southborough Conservation Commission to have a significant or cumulative effect upon wetland values: public or private water supply, flood control, groundwater supply, storm damage prevention, erosion and sedimentation control, wildlife habitat, water pollution control, fisheries and fresh water shellfish, and recreation (collectively the wetland values protected by this by-law).

2. JURISDICTION (APPLICABILITY)

Except as permitted by the Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas or within twenty (20) feet of their borders: any freshwater wetland, bordering vegetated wetland, marsh, wet meadow, bog or swamp, any bank, beach, lake, river, pond, stream or any land under said waters, any vernal pool, any land subject to flooding or inundation by groundwater, surface water or storm flowage (collectively, "the resource area"). Any proposed work which falls within one hundred (100) feet (the "bufferzone") of the previously mentioned resource areas must be approved by the Conservation Commission.

3. DEFINITIONS

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

Abutter – means the same as owner of land abutting the activity.

Alter – Includes, without limitations, the following activities when undertaken to, upon, within or affecting resource areas protected by this chapter.

1. Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind.
2. Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics.
3. Drainage or other disturbance of water level or water table.
4. Dumping, discharging or filling with any material which may degrade water quality.
5. Placing of fill or removal of material which would alter elevation.
6. Driving of piles, erection, alteration, replacement, or repair of buildings or structures of any kind.
7. Placing of obstructions or objects in water.
8. Destruction of plant life, including cutting of trees.
9. Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water.
10. Any activities, changes, or other work which pollute any body of water or groundwater.

Person – Includes 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.

Except as otherwise provided in regulations of the Commission, the definitions of terms in this chapter shall be as set forth in the Wetlands Protection Act MGL Ch. 131, Sec. 40.

4. EXCEPTIONS

- A. The application and permit required by the by-law shall not be required for maintaining, repairing, replacing, but not enlarging a lawfully located single-family residential structure or appurtenance thereto, unless said filing is otherwise required by State or Federal Law.
- B. The application and permit required by this chapter shall not be required for maintaining, repairing or replacing, but not substantially changing or enlarging an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, municipal sewage, telephone, telegraph or other telecommunication services, provided that written notice had been given to the Conservation Commission prior to commencement of the work and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
- C. The application and permit required by this chapter shall not be required for work performed for normal maintenance or improvement of land in agricultural use, provided that written notice has been given to the Conservation Commission prior to commencement of the work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
- D. The application and permit required by this chapter shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that:
 - 1. 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,
 - 2. Advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement.
 - 3. The Conservation Commission or its agent certifies that work as an emergency project.
 - 4. 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
 - 5. Within twenty one (21) days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this chapter.

Upon failure to meet these 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.

- E. The requirements of this chapter shall not apply to any Orders of Conditions or Determinations of Applicability or Notices of Intent filed or issued prior to the adoption of this chapter.

- F. Other than stated in this chapter, the exceptions provided in the Wetlands Protection Act (MGL, Ch. 131, S. 40, as amended) shall not apply.

5. APPLICATIONS FOR PERMITS AND REQUESTS FOR DETERMINATION

- A. Any person desiring to know whether or not a proposed activity or an area is subject to this chapter may request in writing, a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations adopted by the Commission.
- B. Written application shall be filed with the Commission to perform activities regulated by this chapter affecting bufferzones and resource areas protected by this chapter. The application shall include eight (8) copies of 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 chapter.
- C. The Commission, in an appropriate case, shall accept as the application and plans under this chapter the Notice of Intent and plans under the Wetlands Protection Act (MGL. Ch. 131, S. 40, as amended).
- D. At the time of an application or request for determination the applicant shall pay a filing fee specified in regulations adopted by the Commission. This fee is in addition to that required by the Wetlands Protection Act (MGL. Ch. 131, S. 40, as amended.) In addition, the Commission is authorized to require the applicant to pay reasonable costs and expenses of any expert consultant if deemed necessary by the Commission to review the application or request for determination. The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision. The Commission may waive the filing fee and costs and expenses for an application or request for determination filed by a government agency.

6. NOTICE; HEARING

A. NOTICE

Any person filing a permit application with the Commission, at the same time, shall give written notice thereof, by certified mail (return receipt requested) or hand delivery, to all direct abutters at their mailing addresses shown on the most recent applicable tax map of the Assessors. The notice to abutters shall state where copies of the request or application with plans may be examined or obtained. A copy of the notice mailed or delivered and return receipts shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the plans, 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. A person complying with the Notice provisions of this Chapter shall be deemed to have complied with the Notice requirements of the Wetlands Protection Act (M.G.L., Chapter 131, Section 40, as amended.)

B. HEARINGS

1. The Commission shall commence the public hearing on any application or Request for Determination, with written notice given at the expense of the applicant five (5) working days prior to the hearing in a newspaper of general circulation in the Town of Southborough.
2. The Commission shall commence the public hearing within twenty one (21) days from receipt of a completed application or completed 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 twenty one (21) days of the close of the public hearing thereon unless an extension is authorized, in writing, by the applicant.
4. The Commission shall combine its hearing under this by-law with the hearing conducted under the Wetlands Protection Act, MGL. Ch. 131, S 40 and regulations, 30 CMR. 10.00.
5. The Commission shall have authority to continue the hearing to a certain date announced at the hearing or to an unspecified date, for reasons stated at the hearing. The reasons may include:
 - a) receipt of additional information offered by the applicant or others,
 - b) an opportunity for the Commission to conduct an on-site inspection, with or without the applicant of the property.
 - c) information and plans required of the applicant, deemed necessary by the Commission in its discretion,
 - d) snow cover preventing ground from being seen and wetland flagging from being verified by the Commission
 - e) or comments and recommendations of Boards and Officials listed in Section 7.

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 its available.

7. REVIEW BY OTHER BOARDS AND OFFICIALS

Any person filing a permit application with the Commission shall provide a copy thereof at the same time, together with the date and time of a scheduled hearing to the Board of Selectmen, Planning Board, Zoning Board of Appeals, Board of Health, Town Planner and Building Inspector. A copy shall be provided to the Conservation Commission of the adjoining municipality if the permit application pertains to property within three hundred (300) feet of that municipality. The applicant shall have the right to receive comments and recommendations from such Boards and Officials and to respond to them at a hearing of the Commission prior to final action.

Any comments which other boards and officials wish to have brought to the attention of the Commission shall be submitted in writing to the Commission prior to the hearing at which the permit application is to be heard.

8. PERMITS, DETERMINATIONS, CONDITIONS

A. If the Commission, after a public hearing, determines that the activities which are the subject of the application are likely to have significant or cumulative effect upon the wetland values protected by this chapter, the Commission, within twenty-one (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 these values and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

- B. The Commission is empowered to deny a permit for failure to meet the requirements of this chapter; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performances and other requirements in regulations of the Commission; for failure to avoid or permit unacceptable significant or cumulative impacts upon the wetland values protected by this chapter; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.
- C. A permit shall expire three (3) years from the date of issuance. Notwithstanding the above, the Commission, in its discretion, may issue a permit expiring five (5) years from the date for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed for additional one year periods, provided that a request for renewal is received in writing, by the Commission prior to expiration.
- D. For good cause the Commission may revoke or modify a permit issued under this chapter after notice to the holder of the permit and notice to the public, abutters and town boards pursuant to (section of Review by other Boards and Officials) and a public hearing.
- E. The Commission in an appropriate case shall combine the permit or other action on an application issued under this chapter with the Order of Conditions issued under the Wetlands Protection Act.
- F. 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 thereby be registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certified, in writing, to the Commission that the permit has been so recorded.

9. REGULATIONS

- A. After public notice and public hearing, the Commission shall adopt rules and regulations to effectuate the purposes of this chapter. The rules and regulations adopted under this By-Law shall not expand the powers of the Commission beyond the authority granted by this By-Law. Failure by the Commission beyond the authority granted by this By-Law. Failure by the Commission to adopt 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 chapter.
- B. Public notice shall be given at least three (3) weeks prior to such hearing by publication in a newspaper of general circulation in the Town and by posting with the Town Clerk.
- C. At a minimum these regulations shall define key terms in this chapter not inconsistent with this chapter.
- D. Unless otherwise stated in this chapter or in the rules and regulations promulgated under this chapter, the definitions, procedures and performance standards of the Wetlands Protection Act, MGL. 131, Section 40 and associated Wetlands Regulations, 310 CMR 10.00 shall apply.

10. SECURITY

As part of a permit issued under this by-law, in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the

performance and observances of the conditions imposed hereunder be secured wholly or in part by one of more of the methods described below.

- A. By a proper bond or deposit of money or other undertaking of financial responsibility sufficient in the opinion of the Commission. This security shall be received by the Commission prior to the commencement of the work and will 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. This method shall be used only with the consent of the applicant.

11. ENFORCEMENT

- A. 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 chapter and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.
- B. The Commission shall have authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions. Any person who violates provisions of this by-law may be required to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.
- C. Town boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- D. Any person who violates any provision of this chapter, regulations thereunder or permits issued thereunder shall be punished by a fine of not more than five hundred dollars (\$500.) as allowed under MGL, Ch. 40, Sec. 21D. Each day, or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the chapter, regulation or permit violated shall constitute a separate offense.
- E. Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.

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 chapter. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient case for the Commission to deny a permit or grant a permit with conditions.

13. APPEALS

A decision of the Commission shall be reviewable in the Superior Court in an action filed within sixty (60) days thereof in accordance with MGL, Ch. 249, Sec. 4.

14. STATUTORY AUTHORITY

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetland Protection Act, MGL, Ch. 131, Sec. 40 and regulations thereunder.

15. **SEVERABILITY**

Invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof nor shall it invalidate any permit or determination which previously has been issued.