

ARTICLE 3 - 13

WETLANDS PROTECTION

Sec. 1. **PURPOSE.**

The purpose of this By-Law is to protect the wetlands, related water resources, and adjoining land areas in the Town of Hanson by controlling activities deemed by the Hanson Conservation Commission likely to have a significant or cumulative effect upon wetland 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, wildlife habitat, recreation, aesthetics, and agricultural values (collectively, the "wetlands values" protected by this By-Law).

Sec.2. **JURISDICTION.**

Except as permitted by the Hanson Conservation Commission or as provided in this By-Law, no person shall remove, fill, dredge, build upon, or alter the following areas:

- a) Within 100 feet of any freshwater wetland, marsh, wet meadow, bog, or swamp;
- b) Within 100 feet of any bank, lake, pond, stream;
- c) Any land under said waters;
- d) Within 100 feet of any land subject to flooding or inundation by groundwater or surface water.

Sec.3. **EXCEPTIONS.**

A Notice of Intent required by this By-Law shall not be required for maintaining, repairing, or replacing an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services, provided that:

- a) The structure or facility is not substantially changed or enlarged;

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- b) Written notice, with detailed plans of the work to be performed has been given to the Conservation Commission prior to commencement of work;
- c) The work conforms to performance standards and design specifications in regulations adopted by the Commission

A Notice of Intent required by this By-Law shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that:

- d) The work is to be performed by or has been ordered to be performed by an agency of the Commonwealth of Massachusetts or apolitical subdivision thereof;
- e) Advance written notice, has been given to the Commission prior to commencement of work, within 24 hours or at the latest by the end of the following work day;
- f) The Commission or its agent certifies the work as an emergency project;
- g) The work is performed only for the time and place certified by the Commission for the limited purpose necessary to abate the emergency;
- h) Within 21 days of commencement of an emergency project a Notice of Intent shall be filed with the Conservation Commission for review as provided in this By-Law.

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 mitigating measures.

Other than as stated in this section, the exceptions provided in M.G.L. Ch. 131, s. 40 (Wetlands Protection Act) shall not apply.

Sec. 4.

PERMIT APPLICATIONS AND REQUESTS FOR DETERMINATION

A Notice of Intent under MGL Ch. 131, s. 40 (The Wetlands Protection Act) shall be filed with the Conservation Commission to perform activities regulated by this By-Law affecting resource areas protected by this By-Law. The Notice of Intent shall include such information and plans as are

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deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with an Order of Conditions issued pursuant to this By-Law and MGL Ch. 131, s. 40.

Any person desiring to know whether or not proposed activity or an area is subject to this By-Law may request a determination from the Commission. A request for Determination of Applicability shall contain data and plans specified by the regulations of the Commission.

At the time of filing a Notice of Intent or request, the applicant shall pay a filing fee specified in the regulations of the Commission, or as required by the Massachusetts Wetlands Protection Act, amended section 310 of 801 CMR 4.02 pursuant to MGL c 131, s. 40 and Ch. 236, section 10 Acts of 1988; whichever is larger. The Commission may waive the filing fee for a Notice of Intent or request filed by a government agency.

Sec. 5. NOTICE AND HEARINGS.

Upon filing a Notice of Intent or a Request for a Determination of Applicability with the Conservation Commission, the applicant shall give written notice thereof, by certified mail or signed hand delivery to all abutters according to the most recent records of the Assessors. Abutters include property owners across a traveled way, body of water, or a Town line. The notice to abutters shall enclose a copy of the Notice of Intent or the Request for Determination and a plan, or shall state where copies of same may be examined by abutters. When a person making a Request for Determination of Applicability is other than the property owner(s), the Request, the Notice of Hearing and the Commission's decision shall be sent by the Commission to the owner(s) as well as to the person submitting the Request for Determination.

The Commission shall conduct a public hearing on any properly filed Notice of Intent or Request for Determination with written notice given of such hearing as to time, place, and subject of the hearing, by the applicant, at the expense of the applicant, in a newspaper of general circulation in the Town at least five working days prior to the hearing. The Commission shall commence the public hearing within 21 days of recorded receipt of a completed Notice of Intent or a Request for Determination and shall issue its decision in writing within 21 days of the close of said public hearing. In an appropriate case, the Commission may combine its hearing under this By-Law with the hearing conducted under MGL Ch. 131, Section 40 (The Wetlands Protection Act).

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The Commission shall have the authority to continue any hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or other information and plans required of the applicant deemed necessary by the Commission in its discretion, or for comments and recommendations of other Town Boards and Officials. If 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.

Sec. 6. **PERMITS, DETERMINATIONS AND CONDITIONS**

If after a public hearing, the Conservation Commission determines that the activities which are the subject of the application are likely to have a significant or cumulative effect on the wetland values protected by this' By-Law, the Commission shall, within 21 days of the close of the hearing, issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which it deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

The Commission is empowered to deny a permit for the following reasons;

- a) Failure to meet the requirements of this By-Law;
- b) Failure to submit necessary information and/or plans requested by the Commission;
- c) Failure to meet the design specifications, performance standards and other requirements in regulations of the Commission;
- d) Failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this By-Law
- e) Where no conditions would adequately protect the wetland values protected by this By-Law.

Due consideration shall be given to demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

A permit shall expire three years from the date issued. Any permit may be renewed once for an additional one-year period, provided that a written request for renewal is received by the Commission prior to expiration.

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Any permit issued under this By-Law may be revoked or modified by the Commission for good cause after public notice to the holder of the permit.

In an appropriate case, the Commission may combine the permit or other action on an application issued under this By-Law with the Order of Conditions issued under The Wetlands Protection Act.

Sec. 7. **REGULATIONS**

After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to achieve the purposes of this By-Law. 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 spend or invalidate the effect of this By-Law.

Sec. 8. **DEFINITIONS**

The following definitions shall apply in the interpretation and implementation of this By-Law:

The term "person", shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth of Massachusetts or political subdivision thereof to the extent subject to Town By-Laws, administrative agency, public or quasi-public corporation or body, the Town of Hanson and any other legal entity, its legal representatives, agents or assigns.

The term "alter", shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this By-Law:

- a) Removal, excavation or dredging of soil, sand, loam, peat, gravel or aggregate materials of any kind
- b) Changing of pre-existing drainage characteristics flushing characteristics, salinity distribution, sedimentation patterns, flow patterns of 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;

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- f) Driving of piles, erection, alteration or 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 of water temperature, biochemical oxygen demand or other physical or chemical characteristics of water;
- j) Any activities, changes or work which may 'cause or tend to contribute to pollution of any body of water or groundwater.

Sec. 9. **SECURITY**

As part of a permit issued under this By-Law, in addition to any security required by any other Town or State board, agency or official, the Conservation 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;
- 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 the Town of Hanson whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

Sec. 10. **ENFORCEMENT**

The Conservation Commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this By-Law and may make or cause to be made such examination, surveys or sampling as the Commission deems necessary.

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The Commission shall have the authority to enforce this By-Law, its regulation, and permits issued thereunder by violation notice, cease and desist orders, administrative orders, and civil and criminal court actions.

Upon request of the Commission, the Select Board 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.

Town Boards and Officers, including any Police. Officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this By-Law, regulations thereunder, or permits issued thereunder, shall be punished by a fine of not more than \$300.00. Each offense, and each provision of the By-Law, regulations or permit violated shall constitute a separate offense.

In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in MGL Ch. 40, s. 21 D.

Sec. 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 By-Law. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

Sec. 12. **CERTIFICATE OF COMPLIANCE**

A Certificate of Compliance shall be issued by the Conservation Commission upon request of the property owner after construction has been completed in accordance with the applicable Order of Conditions. Request for such Certificate must be filed with the Commission in writing, at least fifteen (15) working days prior to its need.
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Sec. 13. **RELATION TO THE WETLAND PROTECTION ACT**

This By-Law is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of MGL Ch. 131, s. 40 (The Wetlands Protection Act) and regulations thereunder.

Sec. 14. **SEVERABILITY**

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

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