

ARTICLE XXI
General Wetlands Protection
(amended 2014)

Section 21.1 Purpose

- (a) The purpose of this By-Law is to protect the wetlands, related water resources and adjoining land areas in the Town of Medway by controlling activities deemed by the Conservation Commission likely 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, 58 erosion and sedimentation control, fisheries, wildlife habitat, rare species habitat, agriculture, a aqua-culture and recreational values (collectively, the "resource area values protected by this By-Law"). This By-Law 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 Massachusetts Wetlands Protection Act (M. G.L. Chapter 13 1, section 40) and its regulations (3 10 CMR 10. 00).

Section 21.2 Jurisdiction

- (a) Except as permitted by the Conservation Commission, or as provided in this By-Law, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, banks, reservoirs, lakes, ponds of any size, rivers, streams, creeks, land under waterbodies, lands subject to flooding or inundation by ground water or surface water, and lands within 100 feet of any of the above resource areas. Said resource areas shall be protected whether or not they border surface waters. To be afforded protection, Isolated Vegetated Wetlands (not. including vernal pools) must encompass minimum surface areas of 5,000 square feet.
- (b) Except as permitted by the Commission, no work shall be allowed within 25 feet of wetland resource areas identified in this By-Law (exclusive of the 100 foot buffer zone). This provision shall establish a permanent vegetative buffer between wetland resource areas and developed areas. No removal of vegetation will be permitted within this 25 foot setback except as specifically wavered by the Commission (I.E. Limited Project Wetland Crossings). In cases where the Commission allows the removal of vegetation within the 25 foot setback a comparable area within the 100 foot buffer zone shall be preserved.

Section 21.3 Exceptions

- (a) The application and permit (and subsequent fees) required by this By-Law shall not be required for the following projects:
- (1) Maintaining, 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, water, telephone, telegraph, or other telecommunications services, provided that written notice has been given to the Commission prior to the commencement of work, and provided that the

work conforms to the performance standards in regulations lawfully adopted by the Commission.

- (2) Work performed for normal maintenance or improvement of land which is lawfully in agricultural use at the time the work takes place,
- (3) 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 by, any agency of the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement, provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency. Within 21 days of commencement of an emergency project, a permit application shall be filed with the Commission for review as provided in this By-Law.

Section 21.4 Application/Permits

- (a) Written application shall be filed with the Conservation Commission to perform activities in or on resource areas or areas protected by the By-Law. The permit application shall be identical to that required by the Massachusetts Wetlands Protection Act and its regulations except as described in this By-Law.59
 - (1) All applications where work is proposed within 50 feet of resource areas identified in this By-Law, and requiring a Notice of Intent under the Wetlands Protection Act, shall include but not be limited to:
 - (a) Detailed contour layout drawn by a registered engineer or land surveyor, backed up by field staking of
 - (i) The limit of all wetland resource areas including the 100 foot buffer zones,
 - (ii) Conservation restrictions,
 - (iii) U.S. Army Corps of Engineers demarcation lines
 - (iv) House and septic system sites,
 - (v) Property lines
 - (vi) Any restrictions, including rights-of-way, easements (and type), etc. as shown by title search,
 - (vii) Benchmark reference within 1/2 mile,
 - (viii) Limit of 100 year flood according to the most recently available Flood Insurance Rate Map,
 - (ix) Areas of proposed wetland impact, and replication if applicable,
 - (b) Payment of appropriate fees as required under this By-Law.

Section 21.5 Fees

(a) Application Fees

The Commission shall establish fees for applications, notices of intent and other requests filed with the Commission in the rules and regulations of the Conservation Commission in accordance with Section 21.10 of this Bylaw. Such fees shall be paid by the applicant at the time the application, notice of intent or request is filed. Fees established by the Commission pursuant to this By-law are in addition to any fees required by the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40. The Commission may waive or reduce the filing fee and costs and expenses for an application or request filed by a government agency or otherwise as the Commission may determine by its rules and regulations.

Section 21.6 Permits, Determinations, and Conditions

- (a) Within 21 days of the close of a Public Hearing, the Commission shall issue or deny a permit for the work requested. If it issues a permit, the Commission shall impose conditions which it deems necessary to protect the interests which are protected by this By-Law, and all work shall be done in accordance with those conditions.
- (b) If after consideration of an application, the Commission determines that the area which is subject of the application does not have significant interests protected by this By-Law, the Commission shall inform the applicant within 21 days that a permit is not required.
- (c) Permits and determinations shall expire three years from the date of issuance. Any permit may be renewed one time for an additional one year period, provided that a written request for renewal is received by the Commission at least 45 days prior to the expiration of the permit.
- (d) For good cause, including unexpected conditions actually encountered at the parcel which is subject of the application, and after Public Notice and Public Hearing, the Commission may review or modify a permit issued under this By-Law.
- (e) In appropriate cases, the Commission shall combine the permit, determination, or other action under this By-Law with the Order of Conditions, Determination, or other action issued under the Wetlands Protection Act.

Section 21.7 Enforcement

- (a) The Commission shall have the authority to enforce this By-law, and permits issued pursuant to this By-law, by issuing enforcement orders and by commencing civil and criminal court actions as appropriate. Any person who violates any provision of this By-law or permits issued hereunder shall be punished by a fine of not more than \$300.00 each day, or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the by-law or permit violated shall constitute a separate offense.
- (b) The Commission may elect to utilize the non-criminal disposition procedure set forth in M.G.L. Chapter 40, Section 21D. Members of the

Commission, duly appointed agents of the Commission, and police officers of the Town may enforce this By-law pursuant to Chapter 40 Section 21D. In the case of non-criminal disposition enforcement, the penalty shall be as follows:

First offense \$50.00
Second offense \$100.00
Third offense \$200.00
Fourth and subsequent offenses \$300.00

Section 21.8 Burden of Proof

- (a) The applicant shall have the burden of proving by a preponderance of the credible evidence, that the work proposed in the application will not harm the interests protected by this By-Law. Failure to provide adequate evidence to the Commission which would support a determination that the proposed work will not harm the interests protected by this By-Law shall be sufficient cause for the Commission either to deny a permit, or to grant a permit with conditions.

Section 21.9 Relation to the Wetlands Protection Act

- (a) This By-Law is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of the Wetlands Protection Act, M.G.L. Chapter 13 1, section 40, and the regulations thereunder.

Section 21.10: Regulations

- (a) After public notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purpose of this by-law and the Wetlands Protection Act. Failure by the Commission to promulgate such rules and regulations or a legal declaration of the invalidity of such rules and regulations by a court of law shall not act to suspend or invalidate the effect of this by-law.
- (b) Public notice of any proposed rules and regulations shall be given at least three (3) weeks prior to such public hearing by publication in a newspaper of general circulation in Medway and by posting with the Town Clerk.
- (c) The Commission's Rules and Regulations may define terms contained herein, adopt procedures for the filing of permit applications and specify methods of delineating areas subject to protection under this by-law, provided that such Rules and Regulations are not inconsistent with both this by-law and the Wetlands Protection Act.

Section 21.11 Severability

- (a) The invalidity of any section of this by-law shall not invalidate any other section of provision thereof, nor shall it invalidate any order of condition or permit previously issued.