

ARTICLE XXI

GENERAL WETLANDS PROTECTION

SECTION 1: PURPOSE. The purpose of this bylaw is to protect the wetlands, related water resources, and adjoining land areas in the Town of Lunenburg by prior review and control of activities deemed by the 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, ground water, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution control, fisheries, shellfish, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture and recreation values deemed important to the community (collectively, the “wetland values protected by this bylaw”). This bylaw is intended to utilize the Home Rule authority of this municipality to protect additional standards and procedures stricter than those of the Wetlands Protection Act, G.L.Ch. 131, s.40 and Regulations thereunder, 310 CMR 10.00.

SECTION 2: JURISDICTION. Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or alter the following resource areas: any freshwater wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; creeks; beaches; lands under waterbodies; lands subject to flooding or inundation by groundwater or surface water; lands subject to flooding; lands within 100 feet of any of the aforesaid resource areas; perennial rivers and streams and lands within 200 feet of such rivers and streams (collectively the “resource areas protected by this bylaw”). Said resource areas shall be protected whether or not they border surface waters.

SECTION 3: CONDITIONAL EXEMPTIONS. The permit and application required by this bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, and existing and lawfully located structure or facility used in the service of the public to provided electric, gas, water, telephone, telegraph or other telecommunication provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

The application and permit required by this bylaw shall not be required for work performed for normal maintenance or improvement of land which is lawfully in agricultural use at the time the work takes place, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

The permit and application required by this 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 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 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

Commission 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 Commission for review as provided in this bylaw. Upon failure to meeting 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.

Other than stated in this section the exemptions provided in the Wetlands Protection Act, G.L.Ch.131, s.40, and Regulations, 310 CMR 10.00, shall not apply.

SECTION 4: APPLICATIONS FOR PERMITS AND REQUESTS FOR DETERMINATION. Written application shall be filed with the Commission to perform activities affecting resource areas protected by this bylaw. 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 activities 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, G.L. Ch. 131, s.40, and Regulations, 310 CMR 10.00.

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 (RFD) shall include information and plans as are deemed necessary by the Commission.

At the time of a permit application or RFD, or application for Certificate of Compliance, the applicant shall pay a filing fee specified in Regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act, G.L.Ch.131 s.40 and Regulations, 310 CMR 10.00.

Upon receipt of a permit application or RFD, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the commission to come to a final decision on the application. This fee is called the "consultant fee." The specific consultant services may include, but are not limited to, performing or verifying the accuracy of a resource area survey and delineation, analysis of resource area functions, including wildlife habitat evaluations, hydro geologic and drainage analysis, and environmental or land use law.

The Commission may waive the filing fee, consultant fee, and costs and expenses for an application or RFD filed by a government agency.

The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. The applicant shall pay the fee to be put into a revolving fund which may be drawn upon by the Commission for specific consultant services approved by the Commission at one of its public meetings. **This revolving account shall be**

authorized annually and the amount expended by the Commission from this fund shall be limited for the ensuing fiscal year.

The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based on its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision.

The Commission shall return any unused portion of the consultant fee 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 consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.

The maximum consultant fee charged to reimburse the Commission for reasonable costs and expensed shall be according to the following schedule:

Project Cost	Maximum Fee
Up to \$100,000	\$500
\$100,001 to \$500,000	\$2,500
\$500,001 to \$1,000,000	\$5,000
\$1,000,001 to \$1,500,000	\$7,500
\$1,500,001 to \$2,000,000	\$10,000

Each additional \$500,000 project cost increment (over \$2,000,000) shall be charged at an additional \$2,500 maximum fee per increment.

The project cost means the estimated, entire cost of the project including, but not limited to, building construction, site preparation, landscaping, and all site improvements. The consultant fee shall be paid pro rata for that portion of the project applicable to those activities within resource areas protected by this bylaw. The project shall not be segmented to avoid being subject to the consultant fee. The applicant shall submit estimated project costs at the Commission's request, but the lack of such estimated project costs shall not avoid the payment of the consultant fee.

SECTION 5: NOTICE OF HEARINGS. Any person filing an application or RFD with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivery, to all abutters according to the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, including any in another municipality or across a body of water. The notice to abutters shall enclose a copy of the permit application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. 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 by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any application or RFD, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the municipality.

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.

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.

The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, G.L. Ch. 131, s. 40, and Regulations, 310 CMR 10.00.

The Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 6.

SECTION 6: COORDINATION WITH OTHER BOARDS. Any person filing a Wetlands Protection Act Permit with the Commission shall provide written notice thereof at the same time, by certified mail or hand delivery, to the Board of Selectmen, Planning Board, Zoning Board of Appeals, Board of Health and Building Inspector. The Commission shall not take final action until such boards and officials have had fourteen (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.

SECTION 7: PERMITS AND CONDITIONS. If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result therefrom 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 shall impose conditions which the Commission deems necessary or desirable to protect those 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.

The Commission is empowered to deny a permit for failure to meet the requirement of this bylaw; for failure to submit necessary information and plans requested by the Commission; 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. Due consideration shall be given to any

demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

Lands within 100 feet of specific resource areas, and within 200 feet of rivers and streams, are presumed important to the protection of these resources because activities undertaken in close proximity to wetlands and other resources have a high likelihood of adverse impacts upon them, either immediately as a consequence of construction, or over time as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within aforesaid 100-foot or 200-foot area, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw.

In the case of areas within 200 feet of rivers and streams, no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this bylaw, has proved by a preponderance of evidence that (1) there is no practicable alternative to the proposed project with less adverse impacts, and, as well, should there be no such practicable alternative, (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purposes, logistics, existing technology, costs of the alternatives, and overall project costs.

To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible, shall minimize wetlands alteration, and where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance 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 once for an additional one year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

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 or determination, notice to the public, abutters and town boards, pursuant to secs. 5 and 6, and a public hearing.

No work proposed in any permit 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 holder of the permit certifies in writing to the Commission that the permit has been recorded.

SECTION 8: 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.

At a minimum these regulations shall define key terms in this bylaw not inconsistent with the bylaw and procedures governing the amount and filing of fees.

SECTION 9: DEFINITIONS. The following definitions shall apply in the interpretation and implementation of this bylaw.

The term "bank" shall include the land area which normally abuts and confines a water body, the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in slope or the mean annual flood level, whichever is higher.

The term "vernal pool" shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

The term "rare species" shall include, without limitation, all vertebrate and invertebrate animal and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

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.

The term "alter" shall include, without limitation, the following:

- (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 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, biological, 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.
- (k) Application of pesticides or herbicides.
- (l) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

SECTION 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 thereunder (including conditions requiring mitigation work) 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 accepting 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.

SECTION 11: 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 Commission, its agents, officers, and employees 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, subject to the constitutions and laws of the United States and the Commonwealth.

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 provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

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.

Municipal boards and officer, 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 bylaw, or permits, or administrative orders issued thereunder, shall be punished by a fine of up to \$300.00. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of

the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense. As an alternative to criminal prosecution in a specific case, the Commission may issue citations under the non-criminal disposition procedure set forth in G.L. 40, s. 21D.

SECTION 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.

SECTION 13: APPEALS. A decision of the Commission shall be reviewable in the Superior Court in accordance with G.L. Ch.249, s.4.

SECTION 14: 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, Section 40, and Regulations CMA 10.00 thereunder.

SECTION 15: 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 which previously has been issued. (May 14, 1988 SP.T.M. Art 3)(1998 ATM Art. 16)