

WETLAND PROTECTION BY-LAW

Article 3.7 Wetland and Natural Resources Protection **As Amended at Town Meeting October 26, 2009**

Section 3.7.1 Intent, Purpose and Jurisdiction:

The intent and purpose of this by-law is to protect inland and coastal wetland areas, water, and adjoining land areas in Bourne (hereinafter “wetland resource areas”), by regulating those activities specified herein which are likely to have an adverse effect or a cumulative adverse effect upon wetland resource values.

The term “wetland resource values” as used herein shall include public and private water supplies, groundwater supplies, flood control, storm damage prevention, pollution prevention, fisheries and shellfisheries, wildlife habitat, erosion and sedimentation control, and recreational and/or commercial uses.

This by-law shall be administered by the Conservation Commission (hereinafter the “Commission”). No person shall remove, fill, dredge, alter or cause adverse effect to any Wetland Resource Areas or Adjoining Land Areas except as permitted by this by-law. This by-law regulates activity within the A flood zone (as shown on FIRM maps) only if the activity is within 100 feet of another wetland resource area.

All emergencies permitted under the State Wetlands Protection Act, G.L. c. 131, s. 40 as from time to time amended (hereinafter the “Act”), shall be permitted under this by-law.

Section 3.7.2 Permit Applications; Determination; Conditions:

The Commission shall accept as application and plans under this by-law those applications and plans required to be submitted under the Act and the rules and regulations promulgated thereunder, as from time to time amended. The Commission may require such other information as it may reasonably deem necessary to make an informed decision.

The person filing a Notice of Intent with the Bourne Conservation Commission must submit with said document a Notice of Intent Authorization Form which clearly identifies the locus of the intended project, certifies to the Commission that the applicant is the owner of the locus where work is to occur and that the

owner approves of the proposed work. The owner of the locus must also certify to the Commission that he/she is in compliance with the Town of Bourne Bylaw section 3.11.2 regarding payment of any local taxes, fees, assessments, betterments or any other municipal charges, including amounts assessed under the provisions of section twenty-one D.

If after a public hearing, the Commission determines that the proposed activity or activities will have an adverse effect upon any one or more of the wetland resource values protected by this by-law, it shall either issue, issue with conditions, or deny a permit for the activity or activities requested in the application.

Section 3.7.3 Notice of Hearings:

Any person filing a Notice of Intent with the Conservation Commission shall give notice thereof in the same manner required by Mass. Gen. Laws, Chapter 131, Section 40, as from time to time amended and supplemented, and the Rules and Regulations, if any, promulgated thereunder, as from time to time amended and supplemented.

Any person filing a Request for Determination of Applicability with the Conservation Commission shall give written notice thereof, no less than five (5) business days prior to the scheduled Commission meeting, by certified mail-return receipt requested postage prepaid or by delivery in hand, to all abutters to the proposed project and to the property owner if other than the applicant, according to the most recent records of the Bourne Board of Assessors. The notice shall specify the date, time and location of the Commission meeting, and shall also specify where a copy of the Request for Determination, accompanying plans and documents may be examined and obtained.

Section 3.7.4 Definitions; Regulations:

The Definitions contained within the Act (Chapter 131, section 40 MGL) and the Regulations at 310 CMR 10.00 et. seq., are incorporated herein by reference and made a part of this by-law, except where the language in this by-law is more definitive, in which event the language in this by-law shall prevail. State definitions must not conflict with the intent and purpose of this by-law. The Act and the Rules and Regulations promulgated thereunder, and from time to time amended, by the Legislature (Massachusetts General Court) and the Massachusetts Department of Environmental Protection (DEP) are incorporated herein by reference and made a part of this by-law, except where the language in this by-law is more protective, in which event the language in this by-law

shall prevail. Where the Act and 310 CMR 10.00 et. seq. conflict with the intent and purpose of this by-law, the by-law shall prevail.

The following definitions are issued pursuant to this by-law:

“The Rules and Regulations promulgated” shall mean those contained within the Act and 310 CMR 10.00 et. seq., and from time to time amended, the DEP Policy Guidelines as well as the more protective and restrictive language within this by-law, its Rules, Regulations and Policy Guidelines issued pursuant to it.

“Wetland Resource Areas” shall mean all wetland resource areas mentioned in Chapter 131, section 40 MGL and its Regulations at 310 CMR 10.00 et. seq., as from time to time amended, and any other area that due to its vegetation, soils, and/or hydrology supports a wetland plant community or holds enough water to provide a breeding habitat for certain water dependent fauna species. Areas in which 50% or more of the vegetational community is composed of wetland plant species shall be classified as a wetland resource area.

“Water” shall mean all surface and groundwater associated with the Wetland Resource Areas and/or the land 100-ft. from such areas.

“Adjoining Land Areas” shall mean the land 100-ft. back as measured horizontally from the boundary of any Wetland Resource Area not in an area designated by the Commonwealth of Massachusetts as an Area of Critical Environmental Concern (ACEC) or the Bournedale Environmental Overlay District (BEOD). In the ACEC and the BEOD, "Adjoining Land Areas" shall mean the land 200-ft back as measured horizontally from the boundary of any wetland resource area. This area is hereafter referred to as the Buffer Zone. No habitable dwelling or accessories thereto or roadway/driveway shall be allowed any closer than 50-ft. from the boundary of a Wetland Resource Area unless permitted under this by-law. Within ACECs, the BEOD, and when a wetland contains a vernal pool and/or contains rare species habitat, a setback distance of greater than 50-ft may be imposed.

“Adverse Effect” shall mean any change in the quality of a Wetland Resource Area that causes a diminishment in its ability to provide the Wetland Resource Values protected by this By-law.

" Impair" shall mean to make or cause to become worse; weaken or damage. Projects must be designed so as to not significantly impair the wetland resource areas, buffer zones and/or the wetland resource values protected under this bylaw.

"Significant Shellfish Habitat" shall mean those areas containing shellfish in densities (numbers) and/or habitat considered significant by the state Division of Marine Fisheries (DMF) and/or the Bourne Department of Natural Resources (DNR). The Commission shall also evaluate information provided by local recreational and commercial shellfishers and by the applicant. No project shall be permitted if it will cause any adverse effect on shellfish habitat and/or shellfish densities and/or impair the ability to harvest shellfish and/or cause adverse effect to eelgrass beds.

"Eelgrass Beds" shall mean those areas where the marine substrate is populated by eelgrass (Zostera marina) in quantities considered significant to shellfish habitat as determined by DMF and/or Bourne DNR. Destruction of such beds is prohibited.

"Bournedale Environmental Overlay District" means that certain tract of land within the Town of Bourne that is bounded by the Plymouth/Bourne town line, Route 3, the Cape cod Canal, and Route 25.

"Vernal Pool" shall mean those areas mapped and certified by the Massachusetts Natural Heritage and Endangered Species Program as well as those areas identified in the field as eligible for certification.

"Wetland Resource Values" shall mean but not be limited to the following:

- a) **Public and Private Water Supplies** means any surface water or groundwater supply that has, is, or could be used for consumption by humans or livestock.
- b) **Groundwater Supplies** means any water below the earth's surface in the zone of saturation below the Wetland Resource Area or below the Buffer Zone.
- c) **Flood Control** means the ability of the Wetland Resource Area to prevent and/or reduce flooding and flood damage.
- d) **Storm Damage Prevention** means the project must be designed in a manner that ensures the prevention of damage to the Wetland Resource Area and abutting properties caused by, but not limited to, erosion and sedimentation, damage to vegetation, damage to property or buildings, or damage caused by the displacement of water, water-borne debris or water-borne ice. With the exception of "Dinghy Docks", as defined at Section 15.0 of the Town of Bourne Waterways Rules and Regulations, the Commission shall approve

projects in velocity floodzones only after the project engineer certifies in writing that the design of said project complies fully with the first sentence of (d). Projects that fail to gain certification shall be deemed a threat to the health and safety of Bourne's residents and the proposed project shall be denied by the Commission.

- e) **Pollution Prevention** means a project must be designed in a manner as to not cause pollution to the ground or surface waters and that will not in any way result in the degradation to the Wetland Resource Area.
- f) **Fisheries and Shellfisheries** means all fish and shellfish found in fresh, salt or brackish waters and any organisms (including plants) that make up part of the food chain/web of such animals regardless of their commercial value. This by-law requires that a project be designed so as not to contaminate, damage or impair fish/shellfish, its food supply, habitat, or water supply. All projects proposed in public wetland resource areas must meet the performance standard of no adverse effect.
- g) **Wildlife Habitat** means the place within each Wetland Resource Area or Buffer Zone thereto, where animal life (vertebrates/invertebrates) live. This habitat shall consist of the plants, soil physical features and/or water which provides for the animal species. Proposed projects must be designed to maximize protection of wildlife habitat. All state rare species (plant and/or animal) officially listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife under 321 CMR 8.00 et. seq., and from time to time amended, and those species of local significance which live within the wildlife habitat shall be fully protected by this by-law and their habitat must not be impaired in any way by a proposed project.
- h) **Erosion and Sedimentation Control** means both the ability of the Wetland Resource Area to perform these functions and the responsibility of the project applicant to propose a design that incorporates these controls into the plan to prevent damage to the wetland resource area, buffer zone or abutting properties from erosion/sedimentation and water displacement caused by the project. Furthermore, each proposed project must be designed to prevent damage to the wetland resource area due to scouring, propeller wash/shear, re-suspension of sediments and from

increased wave energy. Projects shall be designed to cause no adverse effect on significant shellfish habitat and/or eelgrass beds.

- i) ***Recreational and/or Commercial Use*** means, but is not limited to, the purposes for which the Wetland Resource Area are used by the public such as navigation, fishing, hunting, shellfishing, swimming, water skiing, diving, walking, etc. A project must be designed so as to not impair the ability of the Wetland Resource Area to provide for these public recreational and/or commercial uses.

Section 3.7.5 Activities in Water Resources District and Other Special Considerations:

(A) No wetland, regardless of size, within a Water Resource District designated on the Bourne Zoning Map, as from time to time amended, shall be filled, dredged, excavated or altered unless a permit has first been obtained pursuant to this by-law, and written approvals have been obtained from the Planning Board, the Board of Health, and the Commissioners of the Water District in which the activity is proposed.

(B) No person shall alter, fill, dredge or excavate any wetland classified as a White Cedar Swamp (Chamaecyparis thyoides).

(C) If the proposed project is located within an area designated by the Commonwealth of Massachusetts as an Area of Critical Environmental Concern (ACEC) and/or within the Bournedale Environmental Overlay District (BEOD), the applicant must demonstrate that the proposed project will have no adverse effect upon any Wetland Resource area or Buffer Zone. Further, the Commission may prohibit the location of any building or structure within an ACEC and/or within the buffer zone of Wetland Resource areas within the BEOD.

(D) No new dwelling shall be approved on a slope = > 25% if this slope is located within 100 feet of a wetland resource area.

(E) No project shall be approved if it will cause an adverse effect to significant shellfish habitat and/or shellfish and/or shellfishing or eelgrass beds.

Section 3.7.6 Enforcement; Violations; Penalty:

The Commission, its members, employees, duly authorized agents, natural resource officers, and local and state law enforcement agencies are hereby authorized to enforce the provisions of this by-law. Any person violating this

by-law shall be punished by a fine of not less than \$50.00 nor more than \$300.00 for each offense. Each day or portion thereof during which a violation continues shall constitute a separate offense. Notices of violation shall be in the form of a violation letter, enforcement order and/or a cease and desist request. Any person who files “after-the fact” for a project may be required by the Commission to pay double the filing fee.

Section 3.7.7 Severability:

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

Section 3.7.8 Security:

The Commission may require, as a permit condition, that a performance and observance of other conditions be secured by one or both of the following methods:

- a) By a bond or deposit of money or negotiable securities in the amount determined by the Commission to be sufficient and payable to the Town of Bourne.
- b) By a conservation restriction, easement or other covenant running with the land, executed and properly recorded (or registered, in case of registered land).

Section 3.7.9 Consultant Fees:

The Commission is authorized to require the applicant, to pay the reasonable costs and expenses borne by the Commission (Town) for specific expert engineering and consultant services deemed necessary by the Commission to review the Notice of Intent and/or the Request for Determination of Applicability, up to a maximum of two thousand and five hundred dollars (\$2,500.00).

Said payment can be required at any point in the deliberations prior to a final decision being rendered. Said services may include but are not limited to wetland resource area surveys and delineations, wetland resource area reports, hydrogeological and drainage analysis, wildlife evaluation, shellfish surveys, and environmental/land-use law.

The Commission is hereby authorized to charge for said fee when the Notice of Intent and/or the Request for Determination of Applicability proposes any of

the following: 500 square feet or greater alteration of a coastal or inland wetland resource area: 50 linear feet or greater of bank alteration to an inland or coastal waterway: 500 square feet or greater alteration to the buffer zone: alteration of greater than 500 square feet of land under a water body or the ocean: discharge of any pollutants into or contributing to surface or groundwater or the wetland resource area or buffer zone: or the construction of any detention or retention basin or water control structure.

Any applicant aggrieved by the imposition of, or the size of, the fee, or any act related thereto, may appeal according to the provisions of Massachusetts General Laws.

Section 3.7.10 Appeals:

Any person aggrieved by a decision of the Conservation Commission under the Town of Bourne Wetlands Protection By-law may appeal to the Barnstable Superior Court by filing a civil action in the nature of certiorari pursuant to M.G.L. c. 249, sec. 4 within sixty (60) days next after the proceeding complained of.

Section 3.7.11 Litigation:

After denying a permit and prior to litigation of the matter, the Commission shall meet with the Town Counsel and the Board of Selectmen to evaluate the merits of the pending litigation. After such meeting, the Commission may vote to modify its original position if it determines this action to be in the best interest of the residents of the Town.

Section 3.7.12 Promulgation of Rules and Regulations

After public notice and public hearing the Commission to promulgate such Rules and Regulations for piers, ramps, and floats to effectuate the purpose 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 suspend or invalidate the effect of the by-law or any Rules and/or Regulations promulgated hereunder.