

WETLAND BYLAW

- 1.0 **PURPOSE.** The purpose of this Bylaw is to preserve and protect the wetlands in the Town of Boxborough by regulating and controlling activities deemed to have a significant effect upon the functions and characteristics of such wetlands, including but not limited to the following: the public or private water supply, the ground water supply, flood control, erosion control, storm damage prevention, prevention of pollution, protection of land containing wildlife, recreation and aesthetics. These functions and characteristics are herein referred to collectively as “the interests of this Bylaw.”
- 2.0 **DEFINITIONS.** Wherever used in this Bylaw, the following words and phrases shall mean:
- 2.1 **Alter:** To engage in any one or more of the following activities deemed to have a significant effect upon the functions and characteristics of any wetland or within 100 feet of any wetland:
- a) removing, excavating or dredging of soil, sand, gravel or aggregate materials of any kind;
 - b) filling with any material;
 - c) dumping or discharging anything which may degrade water quality;
 - d) changing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns or flood retention characteristics;
 - e) draining, or otherwise disturbing, the water level or water table;
 - f) driving of pilings, erection of buildings or structures of any kind;
 - g) destroying plant life which may have a significant effect upon the interests of this Bylaw;
 - h) changing the water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water.
- 2.2 **Buffer Zone:** Land within 100 feet horizontally landward from the perimeter or outer border of any wetland.
- 2.3 **Determination of Applicability:** A written decision of the Conservation Commission as to whether this Bylaw applies to any activity proposed in a wetland or buffer zone.
- 2.4 **Land in Agricultural Use:** Land primarily used in the raising of animals, the raising of plants for human food or animal feed, the production of flowers, sod, trees, nursery and greenhouse products, or ornamental plants and shrubs, or any combination thereof.
- 2.5 **Normal Maintenance:** When applied to land in agricultural use, “normal maintenance” shall mean only:
- a) tilling and harvesting practices customarily used in raising crops;
 - b) the pasturing of animals, including the construction and maintenance of such fences and protective structures as may be required;
 - c) the use of fertilizers, pesticides, herbicides and other such materials, subject to all state and federal regulations governing their use; and
 - d) maintenance of existing drainage patterns.
- 2.6 **Notice of Intent:** A complete written description of any activity proposed in a wetland or buffer zone which shall be filed by the applicant with the Conservation Commission pursuant to the provisions of this Bylaw. This Notice of Intent can be used pursuant to the provisions of G.L. Chapter 131, section 40 and 310 CMR 10.
- 2.7 **Order of Conditions:** A written order of the Conservation Commission imposing such conditions upon the activity proposed as will contribute to the protection of the interests of this Bylaw.
- 2.8 **Owner:** The person or persons whose name(s) is recorded as the grantee or holder of the title to a parcel of wetland and or buffer zone that may be affected by an alteration proposed.

- 2.9 Person: The term “person” as used in this Bylaw shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or any political subdivision thereof, administrative agency, public or quasi-public corporation or body, or any legal entity or its legal representative, agents or assigns.
- 2.10 Significance: The standard to be used by the Conservation Commission in determining whether the interests of this Bylaw will be affected by the activity proposed. Without limiting the generality of the foregoing, any activity will be deemed significant to the interests of this Bylaw whenever it is proposed to be carried on in any one or more of the following contexts:
- a) Any actual or potential contamination to public, private or ground water supply including aquifers or recharge areas, land containing wildlife including the biological life necessary to support a fresh-water ecosystem.
 - b) Any change in the flood storage capacity of a freshwater wetland, river, stream or creek.
 - c) Any alteration of a river, stream or creek that results in any increase in the volume or velocity of water which may cause flooding.
 - d) Any actions which shall remove, fill, dredge or alter any area subject to this Bylaw and will result in any threat to the health, welfare and safety of the individual or the community.
 - e) An area consisting of “very poorly drained soil” as described by the National Cooperative Soils Survey of the U.S. Department of Agriculture, Soil Conservation Service.
 - f) An area which is designated a wetland on a restrictive map approved by the Conservation Commission.
- 2.11 Wetland: Any marsh, wet meadow, bog, or swamp. or any brook, stream, creek, river, pond, or lake in the Town of Boxborough, or any land under said waters, whether or not said wetlands are shown on a series of twelve maps numbered 1 through 12 inclusive prepared by the Planning Board of the Town of Boxborough, collectively entitled “W-District Map” and dated May 4, 1974. Without limiting the generality of the foregoing, the wetlands are further defined as follows:
- a) marsh: Any area where a vegetational community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all of, the following plants or groups of plants: arums (Araceae), bladder worts (Utricularia), bur reeds (Sparaganiaceae), button bush (Cephalthus occidentalis), cattails (Typha), duck weeds (Lemnaceae), eel grass (Vallisneria), frog bits (Hydrocharitaceae) horsetails (Equisetaceae), hydrophilic grasses (Hydrophilic Gramineae), leather leaf (Chamaedaphne calyculata), pickerel weeds (Pontederiaceae), pipeworts (Eriocaulon), pond weeds (Potamogeton), rushes (Juncaceae), sedges (Cyperaceae), smartweeds (Polygonum), sweet gale (Myrica gale), water milfoil (Halcragaceae), water willow (Decondon verticillatus).
 - b) wet meadow: Areas where ground water is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all of the following plants or groups of plants: blue flag (Iris), dock (Rumex), false loosestrife (Ludwigia), hydrophilic grasses (Hydrophilic Gramineae), loosestrife (Lythrum), marsh fern (Dryopteris thelypteris), rushes (Juncaceae), sedges (Cyperaceae), sensitive fern (Onoclea sensibilis), smartweed (Polygonum), thorough wort (Eupatorium), vervain (Verbena).
 - c) bog: Any area where standing or slowly running water is near or at the surface during a normal growing season and where a significant portion of the ground or water surface is covered with sphagnum (Sphagnum) and where a significant portion of the vegetational community is made up of one or more of, but not limited to nor necessarily including all, the following plants or groups of plants: aster (Aster nemoralis), azaleas (Rhododendron canadense and R. Viscosum), black spruce (Picea mariana), bog cotton (Eriophorum), cranberry (Vaccinium macrocarpon), high-bush blueberry (Vaccinium corymbosum), larch (Larix laricina), laurels (Kalmia angustifolia and K. polifolia), leatherleaf (Chamaedaphne calyculata), orchids (Arethusa,

- Calopogon, Pogonia), pitcher plants (*Sarracenia purpurea*), sedges (Cyperaceae), sundews (Droseraceae), sweet gale (*Myrica gale*), white cedar (*Chamaecyparis thyoides*).
- d) swamps: Areas where ground water is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily includes all of the following plants or groups of plants: alders (*alnus*), ashes (*Fraxinus*), azaleas (*Rhododendron canadense* and *R. viscosum*), black alder (*Ilex verticillata*), button bush (*Cephalanthus occidentalis*), American or white elm (*Ulmus americana*), white Hellebore (*Veratrum viride*), hemlock (*Tsuga canadensis*), high-bush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), cowslip (*Caltha palustris*), red maple (*Acer rubrum*), skunk cabbage (*Symplocarpus foetidus*), phagnum mosses (*Sphagnum*), spice bush (*Lindera benzoin*), black spruce (*Picea mariana*), poison sumac (*Toxicodendron vernix*), black gum tupelo (*Nyssa sylvatica*), sweet pepper bush (*Clethra alnifolis*), white cedar (*Chamaecyparis thyoides*), willow (*Salicaceae*).

3.0 JURISDICTION

- 3.1 No person shall remove, fill, dredge, or alter any wetland or buffer zone in the Town of Boxborough without first filing written notice of his intention to do so with the Conservation Commission in accord with the provisions set forth in this Bylaw and without receiving and complying with the Order of Conditions of said Commission and provided that all appeal periods shall have elapsed, unless the Commission shall have determined that this Bylaw does not apply to the activity proposed.
- 3.2 This Bylaw shall not apply to the following activities:
- a) Emergency projects necessary for the protection of the health or safety of the residents of Boxborough which are to be performed or which are ordered to be performed by a board, committee or commission of the Town and certified by the Conservation Commission of the Town of Boxborough. No emergency project may continue beyond the time or exceed the scope needed to abate the emergency.
 - b) Maintenance, repair or replacement, without substantial change or enlargement, of existing lawfully located structures or facilities used to provide electric, gas, water, telephone, telegraph or other telecommunication services to the public.
 - c) Normal maintenance of land is agricultural use. The Conservation Commission shall determine whether the requirements of this Bylaw apply to activities proposed that may change land in agricultural use and affect the interests protected by this Bylaw.
 - d) Maintenance and repair of existing public ways including the drainage patterns associated therewith.
- 3.3 In the event that the Conservation Commission shall determine, following the public hearing provided herein, that the interests of this Bylaw can not be preserved and protected by the imposition of conditions, safeguards and limitations on time and or use, it may prohibit the activity or activities proposed by sending written notice of its decision to the applicant and the owner, if the applicant is not the owner, by certified mail.
- 3.4 Any person who desires a determination as to whether this Bylaw applies to an area or to any activity proposed there shall submit a written Request for Determination of Applicability to the Conservation Commission signed by the owner of the area on a form obtainable from the Commission, together with plans showing the existing characteristics of the area and the nature and extent of the activities to be performed there. The plan or plans required need not be endorsed by a registered engineer. The information submitted shall also include: a list, certified by the Board of Assessors, of the names and addresses of all abutters to the area, lot lines, town ways, the location of all wet areas and buffer zones, estimated distances, existing buildings and all changes proposed. The request for a determination shall be delivered to the Conservation Commission or its authorized representative together with a certification that all abutters to the area subject to the determination, and the owner(s), if the person making the request is other than the owner, have been sent notice that a determination is being

requested hereunder. A person delivering this request by hand shall be given a dated receipt. The Commission shall send its Determination of Applicability to the applicant, and the owner of the site, if a person other than the applicant, by certified mail within twenty-one (21) days after it has received the request therefor. If the Conservation Commission shall determine that the By-Law applies to the activity proposed, the applicant must file a full Notice of Intent; but if the Commission fails to execute its Determination of Applicability within twenty-one (21) days, no Notice of Intent will be required.

4.0 PROCEDURE

4.1 Notice of Intent: Unless the Conservation Commission shall have determined that this Bylaw does not apply to such activity pursuant to the provisions of Section 3.4 above, every person who wishes to remove, fill, dredge or alter any wetland or buffer zone shall first file a written notice of intent with the Commission signed by the owner of the area on a form available from the Commission, together with a list, certified by the Board of Assessors, of the names and addresses of all abutters to the area subject to such notice, and with such plans and additional information as the Commission may deem necessary to describe the nature of the activity proposed and its effect on the wetlands and buffer zones. The plans shall show the location of the wetland boundaries and shall be at a scale of 1" = 40' or any other scale that the Conservation Commission may approve. In addition, the notice of intent shall show lot lines, town ways, the names of all abutters, the location of all wet areas and buffers, estimated distances, existing buildings, and all changes proposed. In order to comply with the provisions of this Bylaw, each such notice must be complete as filed.

No such Notice shall be sent before all permits, variances and approvals required by the Bylaws of the Town of Boxborough with respect to the proposed activity, which are obtainable at the time of such notice, have been applied for or obtained. Such notice shall include any information submitted in connection with such permits, variances and approvals which is necessary to describe the effect of the proposed activity on the environment.

The Notice of Intent shall be sent by certified mail, or be hand delivered to the Conservation Commission or its authorized representative. A person filing a Notice of Intent by hand shall be given a dated receipt.

4.2 Public Hearing: The Conservation Commission shall hold a public hearing on the activity proposed within twenty-one (21) days of receiving such Notice of Intent. Notice of the time and place of such hearing shall be given by the Conservation Commission not less than five (5) days prior to the public hearing, by publication in a newspaper of general circulation in Boxborough and by mailing a notice by certified mail to the applicant, owner, if a person other than the applicant, and to all abutters to the area subject to the Notice of Intent. The Commission shall also send the notice of the hearing to the Board of Health, the Town Clerk, the Planning Board, the Selectmen and the Zoning Board of Appeals. All publications and notices shall contain the name of the applicant, a description of the area where the activity is proposed by street address, if any or any other adequate identification of the location, of the area or premises which is the subject of the notice, the date, time and place of the public hearing, the subject matter of the hearing, and the nature of action or relief requested if any. Such hearing may be held at the same time and place as any public hearing required to be held under G.L. Chapter 40A, section 9, G.L. Chapter 131, section 40 or otherwise. If the Commission determines that additional information is necessary, the hearing may be continued to a future date for as many hearings as may be deemed necessary by the Commission. The Conservation Commission, its members and employees, may enter upon privately owned land for the purpose of performing their duties under this Bylaw.

4.3 Burden of Proof: The applicant shall bear the burden of proving that the activity proposed in the notice of intent will not harm any of the interests protected by this ByLaw. The Commission may continue any such hearing to another date to receive additional evidence concerning the wetland, buffer zone and the activity proposed.

- 4.4 Conservation Commission Action: If, after the hearing, the Conservation Commission shall determine that the activity proposed is significant to one or more of the interests of this Bylaw, the Conservation Commission may, by written order issued within twenty-one (21) days after such hearing, impose such conditions, safeguards and limitations on time and use upon such activity as it deems necessary to protect those interests; but the Commission may prohibit such activity altogether, in the event that it finds that the interests of this Bylaw can not be preserved and protected by the imposition of such conditions, safeguards or limitations. Due consideration shall be given to any hardship, financial or otherwise, that may be suffered by the applicant in the event that the activity proposed shall be prohibited. If the Conservation Commission shall determine that the activity proposed does not require the imposition of conditions to preserve and protect the interests of this By-Law, the applicant shall be so notified in writing.
- 4.5 Security: Before issuing an Order of Conditions, the Conservation Commission may require the applicant, or the owner of the area where the activity proposed is to be carried out, to execute and deliver to the Town Treasurer a covenant in a form suitable for recording, acceptable to the Town Counsel and running with the land, to secure compliance by the applicant and owner with all of the conditions, safeguards and limitations contained in any Order of Conditions requested pursuant to this Bylaw. The Commission may also require the applicant and/or the owner to execute and deposit money, negotiable securities and or a proper bond of a surety company qualified to do business in the Commonwealth of Massachusetts and satisfactory to the Town Counsel, sufficient, in the opinion of the Commission, to secure their compliance with the Order of Conditions applied for. The amount of security required by this Commission shall not, however, exceed either the estimated cost of the work required to secure the faithful and satisfactory compliance with the final Order of Conditions, or the estimated cost of the work required to restore the wetlands, buffer zone and other properties that may be affected if the work is not performed as required, whichever is greater.
- 4.6 Order of Conditions: All Orders of Conditions shall expire one (1) year after the date of issuance, unless renewed prior to their expiration. An order of conditions may be renewed for one (1) year upon the request of the applicant. No activity governed by an Order of Conditions shall be carried on unless and until all permits, approvals and variances required by the Bylaws of the Town of Boxborough shall have been obtained, such order of conditions or notification shall have been recorded at the Middlesex South District Registry of Deeds or in the South Middlesex Registry District of the Land Court and until all applicable appeal periods have expired. The Conservation Commission shall have the right to file its Order of Conditions with said Registry or Registry District if the applicant shall fail to do so within sixty (60) days. In the event that an Order of Conditions issued pursuant to this Bylaw is identical to a final Order of Conditions issued pursuant to the provisions of G.L. Chapter 131, section 40, only one (1) such order need be recorded.
- 4.7 Failure to Act: If the Conservation Commission shall have failed to hold a public hearing within the twenty-one (21) day period required, or if after holding such a hearing, it shall have failed within twenty-one (21) days from the date of the adjournment of the public hearing to issue an Order of Conditions, the applicant may notify the Board of Selectmen of such failure and the Selectmen shall, within ten (10) days, instruct the Commission to act within a period of ten (10) days from the date of their instruction. If the Conservation Commission shall fail, once more, to act within the time limited by the Selectmen, the activity proposed shall be deemed to require no conditions or safeguards.
- 4.8 Modification or Amendment: The Conservation Commission shall have the power, on its own motion or upon the petition of any person interested, to modify or amend any such Order of Conditions after notice to all persons interested and a public hearing.
- 5.0 CERTIFICATE OF COMPLIANCE. The Conservation Commission shall, within thirty (30) days after receiving a request therefor, inspect the wetlands and buffer zone where the activity governed by an Order of Conditions was carried out and issue a Certificate of Compliance to the owner of the property in a form suitable for recording, if it shall determine that all of the activity or activities, or portions thereof, limited

thereby have been completed in accord with said Order.

- 6.0 RESPONSIBILITY FOR COMPLIANCE. Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this Bylaw or in violation of any order issued thereunder, shall forthwith comply with any such Order of Conditions or restore such real estate to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three (3) years following the recording of the deed or the date of the death by which such real estate was acquired by such person.
- 7.0 RULES AND REGULATIONS. After due notice and a public hearing, the Commission may from time to time adopt and promulgate rules and regulations to carry out the purposes of this Bylaw, provided, however, that:
- 7.1 said rules and regulations shall not be inconsistent with this Bylaw;
 - 7.2 a copy of said rules and regulations shall be filed in the office of the Town Clerk;
 - 7.3 any amendment or change of rules and regulations shall not apply to any Order of Conditions outstanding; and
 - 7.4 the failure of the Commission to promulgate such rules and regulations or a declaration by a court of law that they, or any of them, are invalid, shall not act to suspend or invalidate the effect of this Bylaw.
- 8.0 ENFORCEMENT. In accord with the provisions of G.L. Chapter 40, sections 21D and 31, as well as every other authority and power that may have been or may hereafter be conferred upon it, the Town of Boxborough may enforce the provisions of this Bylaw, restrain violations thereof and seek injunctions and judgments to secure compliance with its Order of Conditions. Without limiting the generality of the foregoing:
- 8.1 Any person who violates any provision of this Bylaw or of any Order of Conditions issued thereunder shall be punished by a fine of not more than two hundred (\$200) dollars. Each day during which a violation continues shall constitute a separate offense.
 - 8.2 In the event of a violation of this Bylaw or of any order issued thereunder, the Inspector of Buildings may deliver a stop order to the owner, the applicant or his agent by certified mail, return receipt requested, and by posting the same in a conspicuous location on said site. The order shall describe the nature of the violation, and the date on which said order shall expire, which date shall not be greater than six (6) days after the date of the order. Any person who shall violate the provisions of a stop order shall be deemed in violation of the Bylaw; but the failure of the Inspector to deliver a stop order for any reason shall not prevent the Town from pursuing any other legal remedy at law or in equity to restrain violations of this Bylaw and to secure compliance with its orders.
 - 8.3 The penalty provisions of this Bylaw may be imposed upon the owner, the applicant, his general agent, architect(s), engineer(s), contractor(s), or any and all persons having an interest in the area affected by the activity or activities which shall have violated this Bylaw or of any order issued pursuant thereto, including holders of mortgages, attachments and mechanics liens.
 - 8.4 The Town of Boxborough shall be the beneficiary of all fines imposed on account of the violation of this Bylaw in order to defray the expense of enforcing the same.
 - 8.5 This Bylaw may be enforced by a police officer of the Town of Boxborough, the Inspector of Buildings, the Conservation Commission or the Selectmen.
 - 8.6 Upon request of the Conservation Commission, the Board of Selectmen shall instruct the Town Counsel to initiate such legal action as may be necessary to restrain violations of this Bylaw and to secure compliance with orders of the Commission.

- 9.0 APPEALS. In the event that any person shall be aggrieved by a decision of the Conservation Commission under this Bylaw, or by its failure to act thereunder, such person may bring an action in the nature of certiorari under G.L. Chapter 249, section 4.
- 10.0 SEVERABILITY. The invalidity of any section(s) or provision(s) of this Bylaw shall not invalidate any other section or provision thereof.

Adopted: October 4, 1982

Approved by the Attorney General: January 11, 1983

Amended: May 14, 1984

Amendment Approved by the Attorney General: September 14, 1984