

ARTICLE ____: To see if the Town will vote to amend its General By-Laws by adding a new Article 33 thereto regarding Wetlands Administration by the Conservation Commission as follows:

"ARTICLE 33
WETLANDS ADMINISTRATION BYLAW

SECTION 1. MEMBERSHIP

The Town shall have a Conservation Commission consisting of seven (7) members appointed by the Board of Selectmen for a term of three (3) years each.

SECTION 2. PURPOSE

The purpose of this bylaw is to protect the wetlands, related water resources and adjoining land areas in the Town of Milford by controlling activities likely to have a significant or cumulative effect upon the important public values of those areas, which include, without limitation, the following: public or private water supply, ground water supply, flood control, erosion and sedimentation control, storm damage prevention, protection of surrounding land and other homes or buildings, prevention of pollution of ground water or surface water, fisheries, wildlife habitat, recreation and historic natural scenic character of wetland resources area, water courses, lakes and ponds (collectively, the "values protected by this By-Law").

The Conservation Commission shall have the duties and powers specified in the General Laws, including, but not limited to, Chapter 40, Sections 5 and 8C as amended, and Chapter 131, Section 40, as amended. Such duties and powers include, but are not limited to, the following:

- a. the promotion and development of the natural resources and protection of watershed resources of the Town;
- b. the researching of local land areas and the coordination of the activities of unofficial bodies organized for similar purposes;
- c. the advertising, preparation and distribution of books, maps, charts, plans and pamphlets which in its judgment it deems necessary for its work;
- d. the receiving of gifts, bequests or devises of personal property or interests in real property in the name of the Town subject to the approval of the Selectmen;
- e. the acquisition, in the name of the Town, by option, purchase, lease or otherwise, the fee in such land or water rights, conservation restrictions, easements or other contractual rights as may be necessary to acquire, maintain, improve, protect, limit the future use of, or otherwise conserve and properly utilize open spaces in land and water areas within the Town, and the management and control of same;

f. the regulation and protection of wetlands, related water resources and adjoining land areas in the Town of Milford, including the authority to regulate or prohibit the removal, filling, dredging or altering of any area likely to have a significant effect upon public or private water supply, ground water, flood control, storm damage prevention, erosion, prevention of pollution, wildlife habitat or recreation.

SECTION 3. JURISDICTION

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

- land within 100 feet of any:
 - o freshwater wetland
 - o marsh
 - o wet meadow
 - o bog, or
 - o swamp

- land within 100 feet of any
 - o bank
 - o beach
 - o dune, or
 - o flat;
 - o any lake
 - o river,
 - o pond,
 - o stream, or
 - o estuary,

- any land under said waters; or
- within 100 feet of any land subject to flooding or inundation by ground water, or surface water.

No person shall remove, fill, dredge, or alter any bank, freshwater wetland, marsh, wet meadow, bog or swamp or lands bordering on any estuary, creek, river, stream, pond or lake, or any land subject to flooding, other than in the course of maintaining, repairing or replacing, but not substantially changing or enlarging,

- an existing and lawfully located structure, or
- facility used in the service of the public and used to provide electric, gas, water, drainage, telephone, telegraphs and the telecommunication services,

without filing written notice of his intention so to remove, fill, dredge, or alter and without receiving and complying with an order of conditions and provided all appeal periods have elapsed.

Such notice shall be sent by certified mail or hand delivered to the Milford Conservation Commission, including such plans as may be necessary to describe such proposed activity and its effect on the environment.

The same notice, plans, and specifications required to be filed by an applicant under Massachusetts General Law, Chapter 131, Section 40, and 310 CMR 10 et seq., as amended, may be accepted as fulfilling the requirements of this bylaw. The said Commission, in its discretion, may hear any oral presentation under this bylaw at the same public hearing required to be held under the provisions of said Chapter 131, Section 40 of the Massachusetts General Laws.

SECTION 4. APPLICATIONS FOR PERMITS AND REQUESTS FOR DETERMINATION

Written application shall be filed with the Commission to perform activities regulated by this bylaw affecting resource areas protected by this bylaw. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment, including, but not limited to, all information normally required in the building permit application and copies of all applications for approval from the Town of Milford, the Commonwealth of Massachusetts or the United States Government relating to work subject to this bylaw.

The application shall also include a list of abutters for all filings with the exception of Requests for Determination of Applicability certified by the Board of Assessors, including those across a traveled way.

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 application and plans under this bylaw, the Notice of Intent and plans filed under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40.

At the time of a permit application or request for determination or application for a Certificate of Compliance, the applicant shall pay a filing fee specified in the regulations of the Commission. The fee shall be deposited in a revolving fund in accordance with G.L.c.44, Section 52E ½ . If authorized pursuant to Ch. 44, Section 53E ½, such fee shall be deposited in a separate account, for use only for wetlands protection activities. The Conservation Commission shall use such filing fees to implement this bylaw, the regulations promulgated hereunder, and any policies developed by the Conservation Commission, including but not limited to the employment of a Conservation Agent, the responsibilities of such Conservation Agent to include, but not be limited to, review of resource areas, performing site visits, briefing the Conservation Commission, serving as liaison between the Conservation Commission, applicants, abutters, consultants and other interested parties, drafting determinations of applicability and orders of conditions, verifying implementation of erosion control measures, facilitating public hearings, issuing certificates of compliance and enforcing the provisions of this Article, the regulations promulgated hereunder, and the policies developed by the Conservation Commission. This fee is in addition to that required by the Wetlands Protection Act (General Laws Chapter 131, Section 40) and Regulations (310 CMR 10.00), however, the Conservation Commission may credit this

fee towards the fee required with the filing pursuant to the Wetlands Protection Act and its Regulations. The Conservation Commission may waive the filing fee for an application, request for determination or application for a Certificate of Compliance filed by a government agency.

In order to enforce the provisions of this bylaw, the regulations promulgated hereunder, and the policies developed by the Conservation Commission to the extent consistent with Ch. 44, Section 53G of the G.L. and any other law pertaining thereto, or at any point during the review of an application until a Certificate of Compliance is issued, the Conservation Commission may find that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project or because the project may have a significant effect upon the values the Conservation Commission is authorized to protect. Upon reaching such a finding, the Conservation Commission may require an applicant to pay the reasonable costs and expenses for consultant services deemed necessary by the Conservation Commission. This fee is called the Consultant Fee. The consultant services may include, but shall not be limited to, ascertaining the extent of the Conservation Commission's jurisdiction, analyzing resource area functions and values, evaluating wildlife habitat, analyzing hydrogeologic and drainage conditions, providing assistance during appeal or litigation, researching environmental or land use law, and inspecting work to insure compliance with this bylaw.

Outside consultants shall be chosen by the Commission. Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen who shall approve or disapprove the selection within thirty (30) days. The grounds for such an appeal shall be limited to claims that the consultants selected has a conflict of interest or does not possess the minimum required qualifications. The standard of qualification shall consist of Mass. certification or license in the field at issue or references mutually acceptable to the Commission and the applicant, showing expertise and experience in the field at issue. The required time limit for action upon an application by the Commission shall be extended by the duration of the administrative appeal.

SECTION 5. NOTICE AND HEARINGS.

Any person filing an application or a request for determination with the Commission shall, at the same time, give written notice thereof by certified mail or hand delivery to the Inspector of Buildings of the Town of Milford. The notice shall include a general description of the proposed work to be performed and state that an application has been filed with the Conservation Commission.

The Commission shall conduct a public hearing on any application or request for determination with written notice given at the expense of the applicant, five (5) working days prior to the hearing, in a newspaper of general circulation in the Town of Milford.

The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed application or request for determination. An application shall not be deemed complete unless the filing fee is paid.

The Commission shall issue its permit or determination in writing within twenty-one (21) days of the close of the public hearing thereon.

The Commission may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, MGL, Chapter 131, Section 40.

The Commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, and deemed necessary by the Commission in its discretion. In the event 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.

SECTION 6. PERMITS, DETERMINATIONS, AND CONDITIONS

If the Commission, after a public hearing, determines that the activities which are the subject of the application are likely to have a significant effect upon the values protected by this bylaw, the Commission, within twenty one (21) days of the close of the hearing, shall issue or deny a permit for the activities request. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary to protect those values, and all activities shall be done in accordance with those conditions.

The Commission is empowered to deny a permit

- for failure to meet the requirements 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 effects upon the values protected by this bylaw; and
- where no conditions are adequate to protect those values.

A permit shall expire three (3) years from the date of issuance. Any permit may be renewed for additional one (1) year periods, provided that a request for a renewal is received in writing by the Commission thirty (30) days prior to expiration.

For good cause, the Commission may revoke or modify a permit issued under this bylaw after public notice and public hearing, and written notice to the holder of the permit.

The Commission, in an appropriate case, may combine the permit or other action on an application issued under this bylaw with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act.

SECTION 7. REGULATIONS

After public notice and public hearing, the Commission shall promulgate or amend 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.

SECTION 8. ENFORCEMENT

The Commission, its agents, officers, and employees, shall have authority, to the extent permitted by law, to enter upon private property for the purpose of performing their duties under this bylaw and may make or cause to be made such examination, surveys or sampling as the Commission deems necessary.

The Commission or its agent shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions.

Upon request of the Commission or its agent, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law.

Upon request of the Commission or its agent, the Chief of Police shall take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commissioner it's agent in enforcement.

Any person who violates any provision of this bylaw, regulations thereunder, or permits issued thereunder, shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which the violation continues shall constitute a separate offense, and each provision of the bylaw, 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 G.L. Chapter 40, Section 21D.

SECTION 9. BURDEN OF PROOF

The applicant for a permit shall have the burden of providing by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable significant effect upon the wetland values protected by this bylaw.

SECTION 10. RELATION TO THE WETLANDS PROTECTION ACT

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and Home Rule statues, independent of the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, and regulations thereunder.

SECTION 11. 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."

or take any other action in relation thereto.