

Wetlands Protection ByLaw (Non- Zoning)
As amended through April 1990

Section 1. Purpose

The purpose of this bylaw is to protect the wetlands, related water resources, and adjoining land areas in Chilmark by prior review and control of activities deemed by the Conservation Commission likely to have significant adverse impact or significant cumulative adverse effect upon wetland values, including but not limited to the following: Public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, prevention of water pollution, fisheries, shellfish, wildlife habitat, recreation, agriculture, and aquaculture values (collectively, the "wetland values protected by this bylaw").

Section 2. Jurisdiction

Except as permitted by the Conservation Commission or as provided in this Bylaw a person shall remove, fill, dredge, build upon, or alter the following resource areas: any freshwater wetland, coastal wetland, marsh, wet meadow, bog or swamp and land lying within 100 feet thereof; any bank, beach, dune, or flat and land lying within 100 feet thereof; any lake, river, pond, stream, estuary, or the ocean; any land under said waters; or any land subject to flooding or any land subject to inundation by groundwater, surface water, tidal action, or coastal storm flowage and land lying within 100 feet thereof.

Section 3. Exceptions

The permit and applications required by this bylaw shall not be required for maintaining Chilmark's salt ponds for the culture of fish and shellfish, or for 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 to provide electric, gas, water, telephone, telegraph, or other telecommunication services, or for replacing pilings or repairing but not changing or expanding existing and lawfully located docks and moorings, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards in regulations adopted by the Commission.

The permit and applications 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 by an agency of the Commonwealth or a political subdivision thereof, provided that the advance notice, oral or written, has been given to the Commission or within 24 hours after commencement, provided that the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency project a permit application shall be filed with the Commission for review as provided in this bylaw. Upon failure to meet 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.

The permit and application required by this bylaw shall not apply to maintenance of drainage and flooding systems of cranberry bogs, to work performed for normal maintenance or improvement of land in agricultural use

or in aquacultural use.

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. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission may accept as the application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act, G.L. c. 131, Sec. 40.

Any person desiring to know whether or not proposed activity or an area is subject to this bylaw may request in writing a Determination of Applicability (Request for a Determination). Such a request for determination shall contain data and plans specified by the regulations of the Commission. The applicant shall pay a filing fee specified in the regulations of the Commission. The Commission may waive the filing fee and costs and expenses for an application or request filed by a person having no financial connection with the property which is the subject of the request.

In addition to the filing fee, the Commission is authorized to require any applicant to pay the reasonable costs and expenses borne by the Commission for specific expert engineering and consultant services deemed necessary by the Commission to review a Notice of Intent and/or Request for Determination 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 rendered. Said services may include but are not necessarily limited to wetland surveys and delineation, wetland resource area reports, hydrogeologic and drainage analysis, wildlife evaluation, shellfish surveys and environmental/land use law. The Commission is hereby authorized to charge for said fee when a Notice of Intent and/or Request for Determination proposes any of the following:

250 square feet or greater of alteration of fresh water or coastal wetland;
25 linear feet or greater of alteration of a bank or waterway;

250 square feet or greater of alteration of the 100 foot buffer zone of the resource area;

alteration of greater than 250 square feet of land under a water body;

discharge of any pollutants into or contributing to surface or groundwaters or resource areas;

or the construction of a detention or retention basin.

Any unused portion of said fee shall be returned by the Commission to the applicant within forty-five calendar days of written request for same by the applicant unless the Commission decides in a public meeting that other action is necessary. 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 5. Notice and Hearings

Any person filing an application or a request for determination with the Commission at the same time shall give written notice thereof to all abutters according to the most recent records of the assessors, including those across a traveled way and those within 300 feet across a body of water. The notice to abutters shall enclose a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters free of charge. 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 and a public meeting on the determination of applicability, with notice given at the expense of the applicant, five working days prior to the hearing, in a newspaper of general circulation in Chilmark.

The Commission shall have authority to continue the hearing to a date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information and plans required of the applicant 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.

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

Section 6: Permits, Determinations, and Conditions

Determinations: If in response to a Request for Determination, the Commission determines that the activities which are the subject of the application are within the area described in section two and that such activities will alter the resource area, the applicant must then apply for a permit for such activities.

If the Commission after a public hearing determines that the activities which are the subject of the application are likely to have a significant adverse impact or significant cumulative effect on the wetland 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 is empowered to deny a permit 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 on the wetlands values protected by this bylaw; and where no conditions are adequate to protect those values.

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 the annual notification of time and location is given to the Commission. Any permit may be renewed once for an additional one year period, provide that a request for renewal is received in writing by the Commission prior to expiration or is renewed by the Commission prior to its expiration.

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

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

If the applicant is denied a permit for the activity he proposes, he may appeal to a special meeting of a joint committee of the majority of each of the following permitting boards: Board of Selectmen, Board of Health, Planning Board. The meeting shall be called by the chairman of the Board of Selectmen and written notice shall be made to the applicant and to all members of the boards concerned. After hearing all the evidence provided by the applicant and the Conservation Commission, said committee shall, by majority vote, decide if the proposed activity is likely to have a significant or cumulative effect on the value of Chilmark resources protected by this law.

Section 7: Regulations

After public notice and public hearing the Commission may 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.

Section 8: Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw. Otherwise the definitions adopted in the regulations governing the Massachusetts Wetland Protection Act (Chapter 131,

Section 40) compiled and in full force and effect 6/30/83, shall apply.

The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the United States Government, the Commonwealth and political subdivisions thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, Chilmark, and any other legal entity, its legal representatives, agents, or assigns.

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- a) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- b) Changing of pre-existing 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 in new locations;
- g) Destruction of wetland vegetation. Mowing of lawns and normal maintenance of trees and shrubs and the non-commercial cutting of firewood for personal use shall not be considered destruction.
- h) Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- i) Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater.

Section 9: 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 hereunder be secured wholly or in part by a proper bond or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission.

Section 10: Enforcement

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.

The Commission shall have the 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, Board of Selectmen and 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 officers, 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, regulations thereunder, or permits issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a 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. c. 40, Section 21D.

Section 11: 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 protected by this bylaw 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 12: Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rules Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, G.L. c. 131, Section 40, and regulations thereunder and independent of the Zoning Act, Massachusetts General Laws , Chapter 40A.

Section 13: Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision hereof, nor shall it invalidate any permit or determination which previously has been issued.

Originally adopted at ATM April 28, 1986,
amended by additions to Section 4 in 1989 and 1990.