

Mattapoisett Wetlands Protection By-Law

Section 1.0 Purpose

The purpose of this By-law is to protect the wetlands, and related water resources, in Mattapoisett, by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, protection of fisheries, protection of land containing shellfish, and protection of wildlife habitat, (collectively, the "resource area values protected by this bylaw").

Section 2.0 Jurisdiction

- 2.1 Except as permitted by the Conservation Commission or as provided by this By-law, no person shall remove, fill, dredge, or alter any bank, fresh water wetland, coastal wetland, beach, flat, marsh, meadow, bog, swamp, or land, bordering on any estuary, creek, river, stream, pond, or lake, or any land under said waters, or land subject coastal storm flowage or flooding, or any other wetland greater than thirty thousand square feet in size (collectively the resource areas protected by this By-law), 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 public and used to provide electric, gas, water, telephone, telegraph, or other telecommunication services, or in the course of the maintenance of drainage and flooding systems of cranberry bogs, and work performed for normal maintenance or improvement of land in agricultural use, (4) without filing written notice of his intention to so 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 Conservation Commission, hereafter the commission, including such plans and sufficient information necessary to describe the proposed activity and its effect on the areas subject to protection under this By-law.
- 2.2 The same notice, plans, and specifications, required to be filed by the applicant under Massachusetts General Laws, (M.G.L.) Chapter 131, Section 40, will be accepted as fulfilling the requirements of this By-law, unless specified below.
- 2.3 The commission, in its discretion, may hear any oral presentation under this By-law at the same public hearing required to be held under the provisions of M.G.L. Chapter 131, Section 40.
- 2.4 Definitions, procedures, the presumption concerning Title 5 of the State Environmental Code, the Mattapoisett Board of Health local septic regulations, the presumptions of significance, and performance standards set forth in the Wetlands Protection Act, M.G.L. C. 131, S. 40 and in the wetland regulations (310 CMR 10.00 et. seq.) issued, and as may be amended, by the Department of Environmental Protection, are hereby made part of this By-law, unless specified below.

Section 3.0 Notice to Abutters

3.1 Any person filing a request for determination of applicability with the commission pursuant to this By-law shall at the same time give written notification thereof, by delivery in hand or by certified mail, return receipt requested, to all direct abutters with common property lines with the land where activity is proposed, at the mailing addresses shown on the most recent applicable tax list of assessors.

3.2 Any person filing a abbreviated notice of resource delineation with the commission pursuant to this By-law shall at the same time give written notification thereof, by delivery in hand or by certified mail, return receipt requested, to all abutters within one hundred feet of the property line of the land where delineation is under consideration, at the mailing addresses shown on the most recent applicable tax list of assessors, including, but not limited to, owners of land directly opposite said proposed activity on any public or private street or way, and in another municipality or across a small body of water.

3.3 Any person filing a notice of intent with the commission pursuant to this By-law shall at the same time give written notification thereof, by delivery in hand or by certified mail, return receipt requested, to all abutters within one hundred feet of the property line of the land where activity is proposed, at the mailing addresses shown on the most recent applicable tax list of assessors, including, but not limited to, owners of land directly opposite said proposed activity on any public or private street or way, and in another municipality or across a small body of water.

3.4 Said notification shall be at the applicant's expense, and shall state where copies of the notice of intention may be examined and obtained and where information regarding the date, time and place of the public hearing may be obtained.

3.5 Proof of such notification, with a copy of the notice mail or delivered, shall be filed with the commission.

Section 4.0 Definitions

4.1 "Hydric Soil" shall mean any soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

4.2 "Other Wetland" shall mean any pond, vegetated wetland, or area that under natural conditions would support hydrophytes, or contiguous combination of such areas, that exceed 30,000 square feet in size, without regard to whether these areas are subject to separate jurisdiction of M.G.L. C. 131, S.40. In the case of vegetated wetlands, the boundary of other wetlands shall be the determined in the same manner as the edge of borderline vegetated wetlands in 310 CMR 10.55, as amended, unless the vegetation has been altered or removed. If the vegetation has been altered or removed, the determination of the edge of the wetland shall be made by determining the extent of hydric soils.

4.3 "Pond" shall have the same meaning as pond (Inland in DEP Regulations 310 CMR 10.0, as amended, except the minimum surface area is 30,000 square feet.

4.4 "Sufficient Information" shall mean the following requirements

A. For plans:

1. Three complete copies of the permit application and supporting documents must be submitted;
2. the plans submitted to the commission shall be high-lighted with transparent marker pen in the following manner:
 - Green: the edge of bordering vegetated wetlands;
 - Blue: bank
 - Dashed blue: the edge of land subject to flooding;
 - Yellow: the limit of the buffer zone;
 - Red: all culverts and discharges;
 - Orange: the edge of other wetlands;
3. The location of the consecutively numbered flags denoting wetland resources shall be shown on the plan and shall be certified by a registered land surveyor, registered sanitarian, or professional engineer.
4. Elevations, at a minimum, shall be shown in two foot contours, sites located within, or in the proximity of land subject to coastal storm flooding, shall utilize a Mean Sea Level datum or any other appropriate datum designated by the Federal Emergency Management Agency (FEMA) for construction in flood prone areas;
5. All offset distances from the proposed foundations(s), well(s), and septic system(s) to all wells, septic systems, wetland resources, property lines, stream, watercourses, drainage structures, or easements within 150 feet, shall be shown;
6. All distances and % slope along septic system piping shall be shown;
7. Where septic systems are proposed, the maximum groundwater water elevation, and the elevation of the bottom of the leaching facility, the elevation of inlets, outlets and finish grades shall be given, as well as breakout calculations where the septic system is located on a slope.
8. All soil logs must be submitted showing the type of material, soil horizons, elevation of the existing grade, maximum ground water elevation, depth of hole, and location of percolation test, with corresponding elevation;

9. Plan scale shall be no less than 1" = 40'
10. All proposed grades must be shown;
11. The limit of work shall be shown on the plan;
12. All proposed structures within 100 feet of the resource areas shall be shown, and;
13. The assessor's lot and plot numbers and the subdivision lot number, where applicable, on the lot where work is proposed, shall be shown;
14. The estimated project cost in accordance with Section 8.9(c) of this By-law.

B. For the site inspection:

1. Adequate access must be granted to the commission, its agents and consultants, to determine the accuracy of the information submitted in the notice of intent;
2. Upon request, the location of the proposed house building corners, driveway, leaching area for septic systems, and well(s) must be marked by labeled stakes in the field;
3. Upon request, the lot corners shall be staked to enable the commission to find the lot;
4. All resource areas within 100 feet of all proposed work shall be marked by consecutively numbered tags;
5. The lot shall be marked in manner so as to enable the commission to locate the area of the proposed activity

Section 5.0 Powers

5.1 The commission shall consider all information in the record and issue a decision that will protect the resource area values listed in The Commission may determine that.

- A. The land where the activity is proposed is not significant to the resource area values listed in Section 1;
- B. The project may be approved as proposed;
- C. The project may be approved provided the work is done according to specific conditions;

- D. The work cannot be done in such a manner that would protect the resource area values listed in Section 1 and must be denied; or,
- E. The information available or the commission is not sufficient to make an informed, objective decision and the project must be denied without prejudice.

Section 6.0 Permits and Conditions

6.1 Permits that are issued with conditions shall be issued on the same Order of Conditions as that issued pursuant to the Wetlands Protection Act. Conditions authorized solely by the provision of the By-law shall be in a separate section under the heading "additional conditions pursuant to the Town of Mattapoissett Wetlands Protection By-Law."

6.2 Administrative Approval: Activities considered minor and that would predictably have no measurable or cumulative impact upon the resource areas protected by this Bylaw, may be reviewed and permitted by Conservation Commission, Conservation Agent or Code Enforcement Officer pursuant to section 14.0 Request for Site Inspection.

6.3 Setbacks: ten) feet, The Commission shall presume that any activity or alteration within 10 (and or the construction of any new dwelling within 15 (fifteen) feet, of any freshwater wetlands, marshes, estuaries, wet meadows, bogs, swamps, springs, banks, beaches, reservoirs, lakes, ponds, and land under water bodies, intermittent streams, brooks and creeks, and perennial rivers and streams, has a significant individual or cumulative impact upon the resource area values protected by this Bylaw and shall be prohibited.

i. This presumption may be overcome where applicant can clearly demonstrate with credible evidence the proposed activity or alteration would have no individual or cumulative impact upon any of the resource area values protected by this Bylaw in accordance with regulations hereunder. Alternatively, the Commission may waive the setback if it determines that an applicant satisfies the wavier requirements in sec. 6.4

ii. The following shall not be subject to this setback presumption: Piers and other water dependent uses, walkways, routine maintenance, repairs and construction on legally preexisting structures so long as there is no expansion in the structure; agricultural and aqua cultural projects; continuation of a legally preexisting use; or the construction and maintenance of publicly maintained trails that restrict the use of motorized vehicles.

6.4 Waivers: The commission may waive specifically identified and requested procedure, design specifications, performance standards, or other requirements set forth in it Regulations, provided that:

- a) The Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said Regulation;
- b) That avoidance, minimization and mitigation have been employed to the maximum extent feasible; and
- c) That the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

6.5 Additional Waiver Standards:

a) Prohibited Wetland Alterations- Wetland alterations intended to make lands buildable, as by fulfilling septic system setback requirements, flood elevation requirements, or other minimum construction setback requirements, or to achieve minimum lot area requirements, are prohibited.

Section 7.0 Emergency Projects

7.1 The project plans and application required by this By-law shall not be required by emergency projects necessary for the protection of the health and/or safety of the public, provided that the threat to public health is so immediate that to comply with Section 2 would constitute a threat to the public health and/or safety, and

- A. The work is performed or is ordered to be performed by an agency of the commonwealth or political subdivision thereof, and
- B. Advance notice shall be given to the commission prior to the commencement of work, and
- C. The commission shall have certified the project as an emergency project, and
- D. The work is performed only for the time and place certified by the commission for the limited purpose necessary to abate the emergency and
- E. The work is performed in a manner prescribed by the commission.

7.2 The commission may, after due notice, require a permit application pursuant to Section 2, revoke or modify any emergency project approval, and/or order restoration and mitigation measures, for failure to meeting the requirements of Section 7.1.

7.3 The commission may adopt emergency regulations under this By-law for limited durations after severe coastal storms, notice of which shall be provided as soon as possible after their adoption.

Section 8.0 Consultants Fee

8.1 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. The fee is called a consultants fee.

8.2 The specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, including wildlife habitat evaluations, hydrogeological and drainage analysis and environmental or land use law.

8.3 The commission may require the payment of the consultants' fee at any point in the deliberations prior to a final decision.

8.4 The applicant shall pay the fee to the town to be put into a special purpose account established by the commission which may be drawn upon by the commission at one of its public meetings.

8.5 The commission is hereby authorized to charge for said fee when the notice of intent, proposes any of the following:

- A. Five hundred (500) square feet or greater alteration of a coastal or inland resource area,
- B. Fifty (50) linear feet or greater of bank alteration to a coastal or inland waterway,
- C. Five hundred (500) square feet or greater alteration of land under a water body,
- D. Discharge of any pollutants into or contributing to surface or groundwater of the wetland resource area or buffer zone, or
- E. Construction of any detention or retention basin, or water control structure.

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

8.7 The commission shall return any unused portion of the consultant fee to the applicant unless the commission decides at public meeting other action is necessary.

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

8.9.

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

Project Cost	Maximum Fee
up to \$100,000	No Fee
\$100,001 - \$500,000	\$5,500
\$500,000 - \$1,000,000	\$9,500
\$1,000,001 - \$1,500,000	\$15,500
\$1,500,001 - \$2,000,000	\$20,000

- A. Each additional project cost increment of \$500,000 over \$2,000,000 shall be charged at an additional \$3,500 maximum fee per increment;
- B. 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.
- C. The consultant fee shall be paid on a pro rata basis for that portion of the project cost applicable to those activities within resource areas protected by this bylaw;
- D. The project shall not be segmented to avoid being subject to the consultant fee;
- E. 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 consultants' fee.

8.10 Notwithstanding the provisions Section 8.9, no fee shall be assessed under this section for the construction of a single family dwelling, and appurtenant facilities thereto, on a lot less than 5 acres in size, provided the only resource area impacted is land subject to coastal storm flowage or buffer zone to resource areas.

Section 9.0 Fees

Fees may be established by the commission, and may be amended, in consultation with the finance committee, subject to approval by the board of selectmen, for extensions and amendments to orders of conditions, and Site Inspections. Fees shall be effective for any request for extensions or amended orders of conditions or any Site Inspection Form filed ten days after approval of said fees by the board for selectmen. No such fees schedule shall be implemented unless a public hearing is held to discuss the fee.

Section 10.0 Security

10.1 As part of a permit issued under this By-law, an 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 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 in a form approved by town counsel;
- b. By the conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the town 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.

Section 11.0 Appeals

11.1 A decision by the commission listed as "additional conditions pursuant to the Town of Mattapoisett Wetlands Protection By-law" shall be reviewable in the superior court, in accordance with M.G.L. C. 249, S. 4, Or as otherwise provided by law.

11.2 Conditions to an Order of Conditions not listed under "Additional Conditions Pursuant to Town of Mattapoisett Wetlands Protection by-Law" are appealable to DEP pursuant or the Wetlands Protection Act, G.L.C. 131, S. 40, And DEP Wetland Regulations 310 Cmr 10.00 et seq., as amended. Regulation procedures for the issuance of a final order of conditions.

Section 12.0 Effective Date

12.1 In addition to all other local, state, and federal permits and approvals that are required, a permit pursuant to this By-law shall be required for activity under the jurisdiction of this By-law upon its taking effect pursuant to G.L. Chapter 40, Section 32, or otherwise provided bylaw. However, this By-law shall not apply to any activity if:

- a. A final Order of Conditions issued pursuant to the Massachusetts Wetlands Protection Act for that activity is in effect, and was issued prior to the effective date of this By-law; or,
- b. A notice of intent application pursuant to the Massachusetts Wetlands Protection Act was filed for that activity, prior to the effective date of this Bylaw, for which a final Order of Conditions may be pending.

Section 13.0 Severability

The invalidity of any section or provision of this By-law shall not invalidate any other section or provision thereof, nor shall it invalidate any Order of Conditions Permit which has previously been issued.

Section 14.0 Requests for Site Inspection

14.1 Prior to the filing of a request of determination of applicability, Abbreviated Notice of Resource Area Delineation or Notice of Intent, a Site Inspection Form may be filed with the Conservation Commission for the purpose of informally identifying the wetland resource areas on the site. Such informal identification shall not be binding upon the Commission or on the town until the commission has issued a Determination of Applicability, Order of Resource Area Delineation, or an Order of Conditions for the subject site. Applicant for a Site Inspection Form may be made by the owner of said property, or any person authorized by the owner.

14.2 The a Site Inspection Form shall be submitted to the Conservation Commission office showing the locus, street name where work is proposed and the owner's name and mailing address if not the same as the applicant. Copies of the Site Inspection Form shall be available in the Commission office.

14.3 At the time of filing a Site Inspection Form, the applicant shall pay the appropriate filing fee established pursuant to Section 9.0.

Section 15.0 Regulations

15.1 After public notice of at least 14 days prior to public hearing, The Mattapoisett Conservation Commission may promulgate such rules and regulations to effectuate the purpose of this bylaw, effective when voted and approved by a majority vote of Town Meeting, and filed with Town Clerk. Failure by the Commission to promulgate such rules and regulations or legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.

Section 16.0 Relation to the Wetlands Protection Act

This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and Home Rule statutes, independent of the Wetlands Protection Act (M.G.L. Ch. 131 s. 40), as Amended, and Regulations (310 CMR 10.00), as amended.