

# Wetlands Protection Bylaws



Town of Hampden  
Massachusetts

## **SECTION 1: Purpose**

The purpose of this bylaw is to protect the Wetlands, related water resources and adjoining land areas of the Town of Hampden by prior review and control of activities found by the Conservation Commission (hereinafter "Commission") to have a significant 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, wildlife, wildlife habitat, rare or endangered species, recreation and protection of water quality; these values are to be known collectively as the "wetland values protected by this bylaw."

## **SECTION 2: Jurisdiction**

Except as otherwise provided in this bylaw, no person shall remove, fill, dredge or alter any bank, fresh water wetland, coastal wetland, beach dune, flat, marsh meadow or swamp bordering on any estuary, creek, river, stream, pond, or lake, or any land under said waters or any land subject to flooding without filing an application under Section 5 and complying with the provisions of this bylaw. Except as otherwise provided in this bylaw, no person shall undertake any activity in the above-described areas or with one hundred (100) feet of the above-described areas without filing an application under Section 5 and complying with the provisions of this bylaw.

## **SECTION 3: Exceptions**

The application and permit required by this bylaw shall not be required for maintaining, repairing or replacing, but no substantially changing or enlarging, an existing or lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services, sanitary sewers and storm sewer, provided that written notice has been given to the Commission at least forty-eight (48) hours prior to commencement of work.

The application and permit 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 or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within twenty-four (24) hours after commencement, provided that the Commission or its agent certifies the work as an emergency project, provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency.

The application and permit required by this bylaw shall not apply to work performed for normal maintenance or improvement of land actively devoted to agricultural use at the time of the application, mosquito control work done under Clause (36) of Section 5 of C. 40, or any special Act.

## **SECTION 4: Consultant Fees**

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 an application, as described in Schedule 4a below. The consultant shall review all engineering and consultants' reports submitted to the Commission by or on behalf of the applicant and for field-work incidental thereto. In the event that the services of said expert or consultant are reasonably required by the Commission in any enforcement actions described in Section 15, the applicant shall be responsible for the reasonable fees of said expert or consultant. Said payment can be required up front or at any point in the deliberations prior to a final decision rendered. Said services may include but are not necessarily limited to wetlands survey and delineations, hydro geologic and drainage analyses, wildlife habitat evaluation and environmental land use law. The Commission shall have the sole discretion of assigning either method of consultant payment fee schedules as described in Schedule 4a below for all matters under its jurisdiction.

### **Schedule 4a**

Upon receipt of a permit application or request for determination, 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. This fee is called the consultant fee. The specific consultant services may include but are not limited to wetlands survey and delineation, analysis of wetland values, hydro geologic and drainage analysis, wildlife habitat evaluations and environmental or land use law.

1. The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. The applicant shall pay the fee to the town to be put into a consultant services account of the Commission which may be drawn upon by the Commission for specific consultant services approved by the Commission at one of its public meetings.
2. 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.
3. The Commission shall return any unused portion of the consultant fee to the applicant unless the Commission decides at a public meeting that other consulting services are necessary. Any applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws or regulations issued by the Massachusetts department of environmental protection.

## **SECTION 5: Applications for Permits & Request for Determination**

Written application shall be filed with the Commission to perform activities regulated by this bylaw affecting wetland values 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 upon the environment. No activities shall commence without receiving and complying with a permit, or a negative determination of applicability 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.

At the time of an application or request, the applicant shall pay a filing fee specified in regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act. The Commission may waive the filing fee for an application or request filed by a government agency

and may waive the filing fee for a request for determination filed by a person having no direct or indirect financial connection with the property which is the subject of the request. Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may request in writing a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.

The Commission in an appropriate case may accept as the request under this bylaw the Request for Determination of Applicability filed under the Wetlands Protection Act.

## **SECTION 6: Public Notice and Hearings**

Any person filing an application or a request for determination with the Commission at the same time shall give written notice whereof, by certified mail (return receipt requested or hand delivery) to the owner of the land of other than the applicant, to abutters of the land to their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or 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. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. 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 or request for determination, with written notice given at the expense of the applicant, five working days prior to the hearing, in a newspaper of general circulation in the community. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act.

The Commission shall commence the public hearing within twenty-one days from receipt of a completed application or request for determination, unless the applicant extends the twenty-one day time period by a signed written waiver or if the applicant has failed to pay the consultant fees under Section 4.

The Commission shall have authority to continue the hearing to a date certain announced at the hearing or to an unspecified date, for reason stated at the hearing, which may include the receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its description, or comments and recommendations of boards and officials in Section 7. If a date for continuation is not specified, the hearing shall reconvene within twenty-one days after the submission of a specified piece of information or the occurrence of a specified action. The date, time and place of said continued hearing shall be published in a newspaper of general circulation in the community five working days prior to the continuation, at the expense of the applicant, and written notice shall be sent to any person who so requests in writing.

The Commission shall issue its decision or determination in writing within twenty-one days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

## **SECTION 7: Coordination with Other Boards**

Any person filing a permit application or request for determination with the Commission shall provide written notice thereof at the same time, by certified mail or hand delivery, to the Board of Selectmen, Planning Board, Zoning Board of Appeals, Board of Health, Town Engineer, Building Inspector and Highway Department. The Commission shall not take final action until such boards and officials have had fourteen days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any such comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

## **SECTION 8: Permits, Determinations and Conditions**

The Commission shall have the authority, after a public hearing, to determine whether a specified parcel of land contains or does not contain resource areas protected under this bylaw. If the Commission finds that no such resource areas are present, it shall issue a negative determination.

If the Commission, after a public hearing on the permit application, determines that the activities which are the subject of the application are likely to have a significant effect upon the wetland values protected by this bylaw, the Commission, within twenty-one 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.

If the Commission determines that the activities which are the subject of the application are not likely to have a significant or cumulative detrimental effect upon the wetland values protected by the bylaw, the Commission shall issue a permit without conditions within twenty-one days after the public hearing.

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 significant or cumulative detrimental effects upon the wetland values protected by this bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given by the Commission to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

A permit shall expire three years from the date of issuance, and all work shall be completed prior to expiration. The Commission may, upon good cause shown, extend a permit once for an additional one-year period.

No work proposed in any application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the registry of Deeds, or, if the land affected thereby be registered land, in the registry section of the land court for the district wherein the land lies, by the holder of the permit or, if provided in regulations of the Commission, by the Town of Hampden and until the holder of the permit certifies in writing to the Commission that the permit has been so recorded or the Town of Hampden has recorded said permit.

For good cause the Commission may revoke or modify a permit issued under this bylaw after notice to the holder of the permit, notice to the public, abutters and town boards and officials pursuant to Sections 6 and 7 and public hearing.

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 other action issued under the Wetlands Protection Act.

## **SECTION 9: Preacquisition Violation**

Any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of this section or in violation of any such order issued under this section, shall forthwith comply with any such order 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.

## **SECTION 10: Regulations**

The Commission shall adopt fee and administrative regulations needed to implement the provisions of this bylaw. These regulations shall be consistent with the terms of this bylaw. The Commission may amend only administrative and fee regulations only after public notice and public hearing. Prior to the adoption of said regulations, the Commission shall hold at least two (2) public hearings duly advertised and publish a synopsis of the regulations in a newspaper of general circulation at least thirty (30) days before implementation. The rules and regulations may not expand or enlarge the power or jurisdiction of the Commission granted under this bylaw.

Unless otherwise stated in this bylaw or in the rules and regulations promulgated under this bylaw, the definitions, procedures and performance standards of the Wetlands Protection Act and associated Regulations, 310 C.M.R. 10.00, in effect as of the effective date of this bylaw, shall apply. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this bylaw.

## **SECTION 11: Burden of Proof**

The applicant for a permit shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application will not have a significant effect upon the wetland values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause of the Commission to deny a permit or grant a permit with conditions.

## **SECTION 12: Definitions**

All terms, unless otherwise specified in this section, are as defined in the Massachusetts Wetland Protection Act, M.G.L. Ch. 131, S. 40 and Regulations 310 C.M.R. 10.00.

## **SECTION 13: 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 deposit of money or negotiable securities, including letter of credit, or other undertaking of financial responsibility sufficient in the opinion of the Commission and payable to the Town of Hampden.

## **SECTION 14: Appeals**

Anyone taking issue with a decision of the Commission in issuing a determination of applicability or permit may with ten (10) days of the decision appeal to the Board of Selectmen. This appeal shall state grounds for the appeal and the Board of Selectmen, on consideration of those arguments, may decide to request the Commission to reconsider the decision at issue. Such request by the Board of Selectmen shall be binding in as much as the Commission must reconsider its decision, but any final decision will be solely the responsibility of the Commission.

The Commission, within 21 days of receiving the request for reconsideration from the Board of Selectmen, will open an appeals hearing to consider arguments related to the decision. The Commission may extend the hearing for the purpose of receiving additional information. Upon the close of the appeals hearing, the Commission will issue a final decision within 21 days.

## **SECTION 15: Enforcement**

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

Upon petition of the Commission, the Board of Selectmen and Town Counsel may take such legal action as may be necessary to enforce this bylaw and permits issued pursuant to it under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal Law.

Any person who violates any provision of this bylaw or any condition of permit issued pursuant to it shall be punished by a fine of not more than three hundred (\$300.00) dollars. Each day or portion thereof during which a violation continues shall constitute a separate offense. This fine may be in addition to any levied under the Wetland Protection Act.

In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure known as the "ticketing" approach set forth in G.L.C. 40, Sec. 21D. The fine for any violation disposed of through this procedure shall be two hundred (\$200.00) dollars for each offense. Each day or portion thereof during which a violation continues shall constitute a separate offense. This fine may be in addition to any levied under the Wetlands Protection Act. For purposes of non-criminal disposition, any member duly authorized by a majority of the members of the Commission, Police Officers and Environmental Police Officers shall be enforcing persons.

## **SECTION 16: Relation to the Wetlands Protection Act**

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statute, independent of the Wetlands Protection Act and the Regulations thereunder.

## **SECTION 17: 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.

# **WETLANDS BY-LAW REGULATIONS**

## **Preamble:**

These regulations are promulgated under the authority granted to Hampden Conservation Commission ( hereinafter referred to as the “Commission”) in section #10 of the Hampden Wetlands By-Law, passed at the annual Town Meeting held on April 28, 1992 and approved by the Attorney General on August 5, 1992. The regulations encompass the general rules regarding activities in wetlands and buffer zones as well as a procedure for coordinating wetland related actions among Town Boards that may have an interest in the same land parcel, establishing fees for Requests for Determinations and/or Notice of Intent, establishing consultant fees, establishing a method of security for project completion, assurance that abutters are notified of all projects and establishing additional fines for enforcement of the Bylaw as well as a “ticketing” procedure for violations.

## **GENERAL REGULATIONS**

### **10.01 - Purpose**

### **10.02 – Statement of Jurisdiction**

#### **1). Areas Subject to Protection**

- a)** No one shall remove, dredge, build upon, or alter land within 25 feet of a resource area except in those cases where the Commission determines that a hardship will occur and subject to those conditions imposed by the Commission to protect the wetland values of this By-Law.
- b)** There will be no blasting within the 100 foot buffer of a wetland resource area as defined by the 310 CMR 10.00, M.G.L. Chapter 131, Section 40 and the Town of Hampden Wetland By-Law & Regulations, unless the proponent can prove, thru the services of a geotechnical seismologist or vibration engineer, that the blasting will not adversely impact the resource area.

#### **2). Activities Subject to Regulation**

##### **a) Maintenance of storm sewer and other public facilities.**

Section 3 of this By-Law provides exceptions from the By-Law’s filing requirements for the maintenance of listed structures which include “storm sewers”. For the purpose of this regulation “storm sewers” shall include retention and detention basins which are in any way connected with an approved storm drainage system. Thus, routine maintenance of these areas will also be subject to the exemption. The requirement for advance notification for maintenance of existing public utility devices may be met by the filing with the Commission of a letter of intent signed by the public agency responsible for the maintenance of such structures. If there is a plan for periodic maintenance, this plan will be submitted to the Commission. The agency must meet the performance standards for resource areas under the Wetlands Protection Act and should state their intentions to do so in a letter to the Commission. The agency must also indicate its intention to confer with the Commission of any question of the interpretation of the performance standards arise.



## 10.02 continued

### b) Private Septic Systems

The Commission believes that existing private septic systems fall under the exception in Section 3 of the By-Law. Thus, for the maintenance or reconstruction, the Commission should be notified in writing but no formal filing (Request for Determination or Notice of Intent) needs to be made. If the work is to be performed within 100 feet of any resource area as defined by M.G.L. Chapter 131, Section 40, the performance standards relative to such resource area must be observed. This applies only to existing systems. New systems installed with 100 feet of a resource area must be approved by the Commission.

## 10.03 General Provisions

### 10.04 Definitions

- a) **Bordering Lands Subject to Flooding:** An area with low, flat topography adjacent to and inundated by floodwaters rising from creeks, rivers, streams, ponds or lakes. BLSF extends from the banks of these waterways and water bodies; where a bordering vegetated wetland occurs, it extends from said wetland. The boundary of BLSF is the estimated maximum lateral extent of floodwater, which will theoretically result from the statistical 100-year frequency storm based on the most current precipitation atlases, or from the largest observed or recorded extent of lateral flooding for said area.
- b) **Isolated Land Subject to Flooding:** An isolated depression or basin without an inlet or outlet. ILSF is an area with a minimum size of 1/8 (one-eighth) of an acre which at least once a year confines standing water to an average depth of at least six inches. The boundary of ILSF is the perimeter of the largest observed or recorded volume of water confined in said area; that perimeter, if observations are uncertain, may be defined by the extent of wetland vegetation, and or by the extent of hydric soil, that may be, but is not required to be, found in said area.
- c) **Vernal Pool:** The term "vernal pool" shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be 100 feet outward from the mean annual high-water line defining the depression, but shall not include existing lawns, gardens, landscaped or developed areas.

## 10.05 Procedures

### 1) Time Periods

### 2) Actions by the Commission

### 3) Fees

All fees are in addition to the fees required under the Wetlands Protection Act and/or any fee required for newspaper advertising which must be paid before the hearing is held.

- a) Fee for Request for Determination \$40.00.

- b) Consultant Fees – refer to Section #4 (four) of the By-Law.

#### **4) Public Hearing by the Commission**

#### **5) Security for Compliance**

- a) General Section 13 of the By-Law authorizes the Commission to require as a part of its Order of Conditions a proper bond or deposit of money or negotiable securities, including a letter of credit or other undertaking of financial responsibility sufficient, in the opinion of the Commission, to complete the conditions imposed. This will be payable to the Town of Hampden. The Commission will generally require such security when the project involves the construction of storm systems which drain into resource areas, the construction of retention or detention basins, any altering or filling of a resource area or any other situation where activities will be conducted in such proximity to a wetland area that there is a reasonable risk of harm to the resource area if the Order of Conditions is not complied with. The cost of such projects can be reasonably anticipated by the applicant and such cost estimates from the applicant will be required as part of the submission of an application. The Commission will confer with the Town Engineer to ascertain whether the amount is adequate.
- b) Means of Complying with the Security Requirement
  - 1) By proper performance bond sufficient to secure performance of any actions deemed necessary by the Commission to mitigate impact on resource areas and to repair any damage that may occur during the construction process.
  - 2) By a deposit of money or negotiable securities, sufficient in the opinion of the Commission to secure the performance described in subsection 5a above.

#### **6) Appeals**

**Refer to Section 14 of the By-Laws**

#### **10.06 Emergencies**

**Refer to Section 3 of the By-Law.**

#### **10.07 Compliance With Massachusetts Environmental Policy Act**

#### **10.08 Enforcement Procedures**

Upon petition of the Commission., the Board of Selectmen and Town council may take legal action as may be necessary to enforce this By-Law and permits issued pursuant to it.

#### **10.09 Severability**

#### **10.10 Effective Date**

This By-Law is effective as of April 28, 1992, and any Request for Determination or Notice of Intent filed with the Commission and date stamped on or after that date will be subject to the By-Law and to such of these regulations as have been properly adopted by the Commission.