

WELLFLEET ENVIRONMENTAL PROTECTION BY-LAW

AG 7/29/1986

Article 1. The purpose of this by-law is to protect the natural resources and wetlands existing in the Town of Wellfleet by controlling activities deemed to have a significant or cumulative adverse effect upon environmental values, including but not limited to the following:

- public or private water supply
- groundwater supply and quality
- prevention of pollution
- flood control
- fisheries
- land containing shellfish
- storm damage prevention
- erosion control
- wildlife habitat

Article 2. The term "person" as used in this by-law shall include any individual, group of individuals, association, partnership, corporation, company, business, organization, trust, estate, the Commonwealth or political subdivision thereof, including the Town of Wellfleet, administrative agency, public or quasi-public corporation of body, or any other legal entity or its representative, agent or assigns.

Article 3. No person shall remove, fill, dredge or alter any fresh water wetland, coastal wetland, bank, beach, dune, flat, marsh, wet meadow, bog, swamp or any estuary, creek, river, stream, pond, lake or any land within 100 feet of the foregoing areas or any land under the ocean, land subject to tidal action or coastal storm flowage, land subject to flooding (bordering or isolated); or land in an Area of Critical Environmental Concern* 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, telephone, telegraph and other telecommunication services, without filing written notice of his intention to so remove, fill, dredge or alter with the Conservation Commission of the Town of Wellfleet. Such Notice of Intent shall be sent by certified mail or be hand-delivered to the Commission at the Town Offices and shall include such plans as may be necessary to describe and clearly delineate all proposed activity, its relation to, and its effect on the above-named wetland resources. The same Notice, plans and specifications required to be filed by an applicant under Massachusetts General Laws, Chapter 131, §40, plus the parcel number and the assessor's, map number as kept in the Town Offices in Wellfleet may be accepted as fulfilling the requirements of the by-laws. 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 said Chapter 131, §40, of the Massachusetts General Laws. Upon the written request of any person, the Commission may make a Determination of Applicability of this by-law to any work. Procedures in connection with such a Request for Determination shall be as provided in Massachusetts General

Laws, Chapter 131, §40 and Regulations thereunder as applicable and in effect on the date of the filing of such Request. Definitions set forth in said chapter and section and the regulations in effect as of the date of this by-law as issued by the Department of Environmental Protection thereunder, are hereby made a part of this by-law.

*Areas of Critical Environmental Concern (ACECs) are places in Massachusetts that receive special recognition because of the quality, uniqueness and significance of their natural and cultural resources. These areas are identified and nominated at the community level and are reviewed and designated by the state's Secretary of Environmental Affairs. ACEC designation creates a framework for local and regional stewardship of critical resources and ecosystems.

The Commission and its agent may enter upon the land upon application of a Notice of Intent for purposes of reviewing and monitoring projects which the proposed work is to be done in response to a request for a prior determination of applicability of this by-law or for the purpose of carrying out its duties under this by-law, and may make or cause to be made such examination or survey as deemed necessary.

If any work subject to an Order of Conditions issued under this by-law is not substantially completed within three (3) years from the date of issuance of said Order of Conditions, a new Notice of Intent must be filed, public hearing(s) held and the work re-conditioned or denied by the Commission as seems appropriate under the circumstance at the time. In lieu of the applicant filing a new Notice of Intent, the Commission may, after a request in writing and a public hearing before the three (3) year expiration date, allow an original Order of Conditions to be extended for a period not to exceed two (2) years.

Article 4. If the Conservation Commission has failed to hold a public hearing within twenty-one (21) days of filing a Notice of Intent under this by-law, or if the Commission, after closing such a hearing has failed within twenty-one (21) days therefrom to issue an Order, or, if the Commission upon written request by any person to determine whether this by-law is applicable to any work, fails within twenty-one (21) days from the filing of such request with the Commission to make any determination, the project shall be deemed approved unless, the applicant requests or agrees to an extension beyond the twenty-one (21) days. Any person aggrieved by the Commission's Order, determination of failure to act may appeal to Superior Court, Barnstable County, pursuant to the provisions of Massachusetts General Laws, Chapter 249, §4. Filing of a Notice of Intent or a Request for Determination may be accomplished in the same manner as provided in Massachusetts General Laws, Chapter 131, §40 and regulations thereunder, as may be applicable and in effect on the date of such filing, and shall conform in all respects with any submission guidelines adopted by the Commission as part of its Regulations.

Article 5. The Conservation Commission is empowered to deny permission for any removal, dredging, filling, or altering within the areas subject to protection under this by-law, regardless of any mitigation proposed, including creation of new wetlands, if in its judgment, such denial is necessary to preserve environmental quality of resources and

area defined in Article 3 of this by-law. The Commission may, as alternative to a denial, impose such conditions as it deems necessary to contribute to the protection and preservation of resources described in Article 3 and the values as listed in Article 1, in accordance with the purpose of this by-law.

Article 6. The Notice required by Article 3 of the by-law shall not apply to emergency projects necessary for the protection of the health or safety of the citizens of the Town of Wellfleet and to be performed or ordered to be performed by an administrative agency of the Commonwealth or by the Town of Wellfleet. Emergency projects shall mean any projects certified to be an emergency by the Commissioner of the Department of Environmental Protection or by the Conservation Commission, or other authorized local officials. In no case shall any removal, filling, dredging, or alteration authorized by such emergency certification extend beyond the time necessary to abate the emergency. The Commission is empowered to hold a post-emergency hearing in order to set conditions for any further remedial measures necessary.

Article 7. The Conservation Commission may require the posting of a bond with surety, running to the municipality, and sufficient as to form and surety in the opinion of the Commission's Counsel, to secured faithful and satisfactory performance of the work required by any final Order of Conditions, in such sum and upon such conditions as the Commission may require. Other evidence of financial responsibility which is satisfactory to the Commission may be accepted in lieu of bonding. Notwithstanding the above, the amount of such bond shall not exceed 150% of the estimated cost of the work required or the restoration of affected lands and properties if the work is not performed as required, whichever is greater.

Article 8. Any person who violates any provision of the bylaw, or of any condition issued pursuant to it, shall be punished by a fine of not more than \$200. Each day or portion thereof during which a violation continues shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense. This bylaw may be enforced pursuant to Massachusetts General Laws, Chapter 40, Section 21 (d) by the Conservation Commission through its agent. Upon request of the Conservation Commission, the Board of Selectmen and Town Counsel shall take such legal action as may be necessary to enforce this bylaw and orders issued pursuant to it.

Article 9. The Conservation Commission is empowered thereunder to promulgate and to amend, from time to time, after public notice and hearing, such Regulations as are deemed necessary by it to implement the purpose of this bylaw, whether or not identical to the requirements of MGL C. 131, S. 40. Such Regulations shall not be deemed to be invalid because they are not identical with MGL C.131, S.40, and regulations thereunder, as long as no direct conflict with MGL C. 131, S.40 is thereby created.

Article 10. The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any Order of determination which previously has been issued.