

## DENNIS WETLANDS BYLAW

### **TITLE:**

**This Bylaw shall be known as and may be referred to as the Wetlands Protection Bylaw of the Town of Dennis.**

### **SECTION 1: Purpose**

The purpose of this Bylaw is to further protect the foreshores, wetlands and related water resources in the Town of Dennis, and their values and functions, including but not limited to: public or private water supply; ground water quantity and quality; storm damage prevention; flood control; erosion and sedimentation control; prevention of water pollution; wildlife habitat; shellfish; fisheries; recreation; public trust rights in trustlands aesthetics; agricultural and aquacultural values; (collectively, the wetlands values protected by this Bylaw.)

### **SECTION 2: Jurisdiction & Standards**

Except as permitted by the Conservation Commission or as provided in the Bylaw in Section 3, no person shall remove, fill, dredge or alter in or within 100 feet of the following resource areas: bank; fresh water wetland; coastal wetland; beach; dune; flat; marsh; meadow; bog; swamp; or lands bordering on the ocean or on any estuary; creek river; stream; pond or lake; surface water body; vegetated wetland or unvegetated wetland; any land under said waters; or within the limits of any land subject to flooding or inundation by ground water; surface water; tidal action or coastal storm flowage.

## SECTION 2: Jurisdiction & Standards (cont.)

In the event that the Commission determines that an activity occurring beyond the limit of jurisdiction noted above is likely to have, is having or has had a significant effect on the wetlands values of a resource area, the Commission may require the filing of a Notice of Intent or a Request for Determination of Applicability for that activity.

In determining whether a resource area is subject to the provisions of this Bylaw, the origin of the wetland, whether natural or manmade, is not a relevant factor.

## SECTION 3: Exceptions

The permit and application required by this Bylaw shall not be required 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 telecommunications services, provided written notice has been given to the Commission prior to the commencement of work, and provided that the work conforms to performance standards, design specifications, policy guidelines and other regulations adopted by the Commission.

The permit and application required by this Bylaw shall not be required for normal maintenance or improvement of land or waters in an existing agricultural or aquacultural use, which is now and has been in production at least three of the last five years. Expansion of existing uses in these areas or new uses in areas within the jurisdiction of this Bylaw shall require a permit.

The permit and application required by this Bylaw shall not apply to emergency projects necessary for the protection of wetlands values or the health and safety of the public, provided that the work is to be performed by, or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof.

Prior to the commencement of work the Commission or its agent must certify the work to be an emergency project. The work **must be**

**SECTION 3: Exceptions (cont.)**

performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency, but in no instance shall the emergency period exceed thirty days. All emergency work must conform to the performance standards, design specifications, policy guidelines and other regulations adopted by the Commission. Within twenty-one days of the commencement of an 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.

**SECTION 4: Applications for Permits & Requests for Determinations**

Written applications 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 wetlands, resources areas, and their values. No activities shall commence without receiving a permit issued pursuant to this Bylaw (except as provided in Section 3).

The Commission may, at its discretion, accept as the application and plans under this Bylaw the Notice of Intent and plans filed under the Wetlands Protection Act. M.G.L.A. Chapter 131, Section 40.

Any person desiring to know whether or not a proposed activity, or an area, is subject to this Bylaw may, in writing, request a Determination from the Commission. Such a Request for Determination shall contain data and plans specified by the regulations of the Commission.

At the time of filing a Notice of Intent or Request for Determination of Applicability 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 any applications filed by a government agency.

## **SECTION 5: Permits & Conditions**

If the Commission, after a public hearing, determines that the proposed activities, which are the subject of a Notice of Intent, are not likely to have a significant and cumulative effect upon the wetlands values protected by this Bylaw, the Commission within twenty-one days of the close of the public hearing, shall issue 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 wetland values, and all activities shall be 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 required or requested by the Commission; for failure to meet the design specifications; performance standards policy guidelines or other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant immediate and / or cumulative effects upon the wetlands values protected by this Bylaw; where it is deemed that the denial is necessary to preserve the environmental quality of resource areas of either or both the subject land and contiguous land; and where no conditions would be adequate to protect these values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of a denial, as presented at the public hearing.

## **SECTION 6: Burden of Proof**

The applicant shall have the burden of proof by a preponderance of credible evidence that the work proposed in the application will not have an unacceptable significant and immediate 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 7: Relation to Wetlands Protection Act**

This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Standards independent of the Wetlands Protection Act (M.G.L.A. Chapter 131 Section 40), and regulations thereunder, except where specifically included herein.

**SECTION 8: Notice & Hearings**

The Commission shall conduct a public hearing on any Notice of Intent or Request for Determination of Applicability. At the expense of the applicant, the Commission shall cause written notice of the hearing to be published at least five working days prior to the public hearing in a newspaper of general circulation in the Town of Dennis, and by mailing a notice to the applicant.

The Commission shall commence the public hearing within twenty-one days from the receipt of a completed Notice of Intent or Request for Determination of Applicability. The Commission or its agents shall determine, for scheduling purposes only and in accordance with the submission regulations of the Commission, that the Notice of Intent or Request for Determination of Applicability is complete. The twenty-one day deadline for a hearing may be extended by the Commission or its agents only with the assent of the applicant. The Commission shall issue its decision on the Notice of Intent or Request for Determination of Applicability no later than twenty-one days after the close of the public hearing thereon.

The Commission may in its discretion combine its hearing under this Bylaw with the hearing conducted under the Wetlands Protection Act (M.G.L.A. Chapter 131, Section 40).

The Commission may upon its own initiative, or upon the applicant's request, continue the public hearing to a date and time certain announced at the hearing, for reasons stated at the hearing, which may include the receipt of additional information offered by the applicant or others, or the receipt of information and plans required of the applicant deemed necessary by the Commission.

## **SECTION 9: Regulations**

After public notice and public hearing the Commission may, from time to time, promulgate performance standards, design specifications, policy guidelines and other rules and regulations to accomplish the purposes of this Bylaw. Failure of 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 provisions of this Bylaw.

## **SECTION 10: Security**

The Commission may require the establishment of an escrow account or other security running to the municipality; and sufficient as to form and surety in the opinion of the Commission's Counsel, to secure faithful and satisfactory performance of work required by any permit, in such sum and upon such conditions as the Commission may require. Such escrow account or security shall provide that if the work is not performed as required by the permit, the Commission shall recover the proceeds of such escrow or security upon written demand.

Notwithstanding the above, the amount of such escrow account or security shall not exceed 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. The Commission may, at its discretion, accept as security a conservation restriction easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Dennis whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

## **SECTION 11: 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. With the authority of the property owner or his designee, the Commission may make or cause to be made such examinations, surveys, or sampling, as the Commission deems necessary.

**SECTION 11: Enforcement (cont.)**

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

Upon the request of the Commission, the Board of Selectmen and Town Counsel may take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police may take legal action for enforcement under criminal law.

Upon request of the Commission, municipal boards and officers, including any police officer, natural resource officer, or other officers having police powers, shall have the 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 three hundred dollars (\$300.00).

Each day or portion thereof during which 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 or its agents, may elect to utilize the non-criminal disposition procedure set forth in M.G.L.A. Chapter 40, Section 21D

**SECTION 12: Severability**

The invalidity of any section or provisions of this Bylaw shall not invalidate any other section or provision thereof.

**Dennis Wetlands Bylaw Adopted  
May 5, 1989**