

TOWN OF DOUGLAS
ARTICLE 8: WETLAND BYLAW

SECTION 1: PURPOSE

The purpose of this Bylaw is to protect the floodplains and wetlands of the Town of Douglas by controlling activities deemed to have a significant effect upon wetland values, including but not limited to the following: Public or Private water supply, groundwater, flood control, erosion control, storm damage prevention, water pollution control, wildlife, recreation, aesthetics and fisheries (collectively, the "interests protected by this Bylaw").

SECTION 2

No person shall remove, fill, dredge, alter or build upon or within one hundred feet of any bank, fresh water wetland, flat, marsh, meadow, bog, swamp or upon or within one hundred feet of any estuary, creek, river, stream, pond or lake, or upon or within one hundred feet of any land under said waters or upon or within one hundred feet of any land subject to flooding or inundation, or within one hundred feet of the 100-year storm line, other 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 application for a permit so to remove, fill, dredge, alter or build upon, including such plans as may be necessary to describe such proposed activity and its effect on the environment, and receiving and complying with a permit issued pursuant to this Bylaw. Such application may be identical in form to a Notice of Intention filed pursuant to Mass. General Laws Chapter 131, Section 40, shall be sent by certified mail to the Douglas Conservation Commission, and must be filed concurrently with or after applications for all other variances and approvals required by the Zoning Bylaw, the Subdivision Control Law or any other bylaw or regulation have been obtained; Such application may be identical in form to a Notice of Intention filed pursuant to Mass. General Laws, Chapter 131, Section 40, shall be sent by certified mail to the Douglas Conservation Commission, and must be filed concurrently with or after applications for all other variances and approvals required by the Zoning By-Law, the Subdivision Control Law or any other bylaw or regulation have been obtained; provided, however, that such application shall be filed concurrently with an application for a special permit and/or site plan review for any project located on the Priority Development Sites (PDS), as designated by Town Meeting pursuant to G.L. c. 43D and identified in the Assessor's records as Map 113, Lot 2; Map 115, Lot 5; Map 205, Lots 2-3; Map 206, Lots 1-2; Map 207, Lots 1-2; and Map 230, Lot 2. The Conservation Commission shall set a filing fee by regulation, but no filing fee is required when the Town of Douglas files an application for a permit. Copies of the application shall be sent at the same time, by Certified Mail, to the Board of Selectmen, the Planning Board and the Board of Health. Upon written request of any person, the Conservation Commission shall, within twenty-one days, make a written determination as to whether this Bylaw is applicable to any work or land thereon. When the person requesting a determination is other than the owner, notice of the determination shall be sent to the owner as well as to the requesting person. 54 (Amended under Article 13 at the Special Town Meeting held on November 27, 2007, and approved by the Attorney General on March 6, 2008.)

SECTION 3

The Conservation Commission shall hold a Public Hearing on the application within twenty-one days of its receipt. Notice of the time and place of the Hearing shall be given by the Conservation Commission

at the expense of the applicant, not less than five days prior to the Hearing, by publication in a newspaper of general circulation in Douglas and by mailing a Notice to the applicant, the Board of Health, Board of Selectmen, Planning Board and to such other persons as the Conservation Commission may by regulation determine. The Conservation Commission, its agents, officers, and employees may enter upon privately owned land for the purpose of performing their duties under this Bylaw. A public hearing on a permit application for work proposed the Priority Development Sites (PDS), as designated by Town Meeting pursuant to G.L. c. 43D and identified in the Assessor's records as Map 113, Lot 2; Map 115, Lot 5; Map 205, Lots 2-3; Map 206, Lots 1-2; Map 207, Lots 1-2; and Map 230, Lot 2; shall normally be closed within 120 days. (Amended under Article 13 at the Special Town Meeting held on November 27, 2007, and approved by the Attorney General on March 6, 2008.)

SECTION 4

If, after the Public Hearing, the Conservation Commission determines that the area which is the subject of the application is significant to the interests protected by this Bylaw, the Conservation Commission shall, within twenty-one (21) days of such hearing, issue or deny a permit for the work requested. If it issues a permit after making such determination, the Conservation Commission shall impose such conditions as it determines are necessary or desirable for the protection of those interests, and all work shall be done in accordance with those conditions. If the Conservation Commission determines that the area which is the subject of the application is not significant to the interests protected by this Bylaw, or that the proposed activity does not require the imposition of conditions, it shall issue a permit without conditions within twenty-one (21) days of the public hearing. Permits shall expire one year from the date of issuance, unless renewed prior to the expiration, and all work shall be completed prior to expiration.

SECTION 5

The Conservation Commission shall not impose additional or more stringent conditions pursuant to Chapter 131, Section 40 of the General Laws than it imposes pursuant to this Bylaw, nor shall it require a notice of intention pursuant to Section 40 to provide materials or data in addition to those required pursuant to this Bylaw.

SECTION 6

After due notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this Bylaw. Failure by the Conservation 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 7

The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not harm the interests protected by this Bylaw. Failure to provide adequate evidence to the Conservation Commission supporting a determination that the proposed work will not harm the interests protected by this Bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or, in the Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence.

SECTION 8

The following definitions shall apply in the interpretation and implementation of this Bylaw: The term "**person**" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agencies, public or quasipublic corporations or bodies, the Town of Douglas, and any other legal entity, its legal representatives, agents or assigns. The term "**alter**" shall include, without limitation, the following actions when undertaken in areas subject to this Bylaw:

- (a) Removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind;
- (b) Changing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and 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) Driving of piles, erection of buildings or structures of any kind;
- (f) Placing of obstructions whether or not they interfere with the flow of water;
- (g) Destruction of plant life;
- (h) Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water.

The term "**banks**" shall mean that part of land adjoining any body of water which confines the water.

The term "**normal maintenance or improvement**" of land in agricultural use shall mean only:

1. Tilling practices customarily employed in the raising of crops;
2. Pasturing of animals, including such fences and protective structures as may be required;
3. Use of fertilizers, pesticides, herbicides, and similar materials subject to state and federal regulations covering their use;
4. Constructing, grading or restoring of field ditches, sub surface drains, grass waterways, culverts, access roads and similar practices to improve drainage, prevent erosion, provide more effective use of rainfall, and improve equipment operation and efficiency, in order to improve conditions for the growing of crops.

"**Improvement**" of land in agricultural use may also include more extensive practices such as the building of ponds, dams, structures for water control, water and sediment basins, and related activities but only where a plan for such activity approved by the Conservation District of the Soil Conservation Service is furnished to the Conservation Commission prior to the commencement of work. All such activity shall subsequently be carried out in accord with said plan. In the event that the work is not carried out in accordance with the required plan, the Conservation Commission may place a stop order on said work and have recourse to such measures as if the plan were an order of conditions.

SECTION 9

The Conservation Commission may adopt additional definitions not inconsistent with this Section 8 in its regulations promulgated pursuant to Section 6 of this Bylaw.

SECTION 10

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this Bylaw or in violation of any permit issued pursuant to this Bylaw shall forthwith comply with any such order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless commenced within three years following the date of acquisition of the real estate by such person.

SECTION 11

Article 8 of the Town of Douglas General Bylaws The Conservation Commission may require, as a permit condition, that the performance and observance of other conditions be secured by one or both of the following methods:

- (a) By a bond or deposit of money or other negotiable securities in an amount determined by the Commission to be sufficient to secure faithful and satisfactory performance of work required by the conditions set forth, and payable to the Town of Douglas. Other evidence of financial responsibility which is satisfactory to the Conservation Commission may be accepted in lieu of bonding. Notwithstanding the above, the amount of such bond 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. Such bond or other security shall be released upon issuance of a Certificate of Compliance.
- (b) By a conservation restriction, easement or other covenant running with the land, executed and properly recorded (or registered, in the case of registered land).

SECTION 12

The application required by the third paragraph of this Bylaw shall not apply to emergency projects necessary for the protection of the health and safety of the citizens of Douglas and to be performed by an administrative agency of the Commonwealth or by the Town. Emergency projects shall mean any projects certified to be an emergency by the Commissioner of the Department of Environmental Quality Engineering and the Conservation Commission if this Bylaw and Massachusetts General Laws Chapter 131, Section 40, as amended, are both applicable, or by the Conservation Commission if only this Bylaw is applicable. In no case shall any removal, filling, dredging or altering authorized by such certification extend beyond the time necessary to abate the emergency.

The provisions of this Bylaw shall not apply to work performed for normal maintenance or improvement of lands in agricultural use as of the effective date of this Bylaw.

SECTION 13

Any person who violates any provision of this Bylaw or of any condition or a permit issued pursuant to it shall be punished by a fine of not more than \$200.00. 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 21D, By a Town police officer or other officer having police powers.

Upon request of the Commission, the Board of Selectmen and Town Counsel shall take such legal action as may be necessary to enforce this Bylaw and permits issued pursuant to it.

SECTION 14

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof. (*The Wetland Bylaw was adopted under Article 6, Section 3, at a Special Town Meeting held on January 5, 1983. Amended under Article 17 at the Annual Town Meeting held on May 20, 2002, and approved by the Attorney General on August 5, 2002.)