

ARTICLE XVII
GENERAL WETLANDS BY-LAW

SECTION 1 Purpose

The purpose of this by-law is to protect the wetlands of the Town of Manchester-by-the-Sea by controlling activities deemed to have a significant or cumulative 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, water pollution prevention, fisheries, shellfish, wildlife and wildlife habitat, aesthetics, agriculture and aquaculture (collectively, the “interests protected by this by-law”).

SECTION 2 Jurisdiction and Exceptions

2.1 Jurisdiction

Except as provided by this by-law or permitted by the Manchester Conservation Commission (“the Commission”), no person shall remove, fill, dredge, alter or build upon or within one hundred feet (100) of the following resource areas: any bank, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow, bog or swamp; any estuary, creek, river, stream, pond, vernal pool, lake or the ocean, or any land under said waters; any land subject to tidal action, coastal storm flowage, flooding or inundation, or within the 100 year storm line.

2.2 Exceptions

No provision of this by-law shall apply to: (1) activity lawfully completed prior to the effective date of this by-law, or (2) activity subject to a negative Determination of Applicability or an Order of Conditions issued by the Commission pursuant to the Wetlands Protection Act, M.G.L. Ch. 131, Section 40, prior to May 5, 1987.

The permit and application required by this by-law shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging: (1) an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services; or (2) an existing and lawfully located public or private way; provided with respect to (1) or (2) that written notice has been given to the Commission prior to commencement of work, and that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

The permit and application required by this by-law shall not be required for work performed in the course of routine stream or brook clearance, provided that the work does not change width, depth or direction of flow, and further provided that written notice has been given to the Commission prior to commencement of work, and that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

The permit and application required by this by-law 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 by or has been ordered to be performed by an agency or the Commonwealth or a political subdivision thereof; advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; the Commission certifies the work as an emergency project; the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review pursuant to this by-law. Upon failure to meet these requirements, the Commission may, after notice and a public hearing, order restoration and mitigation measures.

SECTION 3 Request for Determination of Applicability and Permit Application

3.1 Request for Determination

Upon written request of any person, the Commission shall make a written determination as to whether this by-law applies to any land, or work thereon. The request shall contain such information as the Commission shall prescribe by regulation or as it may require, in its discretion, in a particular case.

3.2 Permit Application

Any person desiring to perform any activity subject to Section 2.1 of this by-law and not described in Section 2.2 of this by-law shall file a written application with the Commission. The application shall contain such information and plans as the Commission determines necessary to describe the proposed activity, its impact on the environment, and its effect on the interests protected by this by-law. When the Commission determines that activity proposed in an application represents only a portion of a plan or project, it may require information describing the entire project and its potential impact. The Commission may, but shall not be required to, accept as an application under this by-law the Notice of Intent filed pursuant to the Wetlands Protection Act, M.G.L. Ch. 131, Section 40.

An application under this by-law shall be sent by certified mail to, or delivered by hand with receipt acknowledged by, the Town Clerk or the Commission, shall be accompanied by the filing fee prescribed in the regulations adopted by the Commission, and shall be filed concurrently with or after application for all other variances and approvals required by the Zoning By-Laws, the Subdivision Control Law, and any other applicable statute, by-law or regulation. No filing fee shall be required when the Town of Manchester is the applicant.

SECTION 4 Notice and Hearing

4.1 Notice: Request for Determination

Any person filing a request for determination of applicability, if other than the owner, shall, at the same time, give notice thereof to the owner by certified mail.

4.2 Notice: Permit Application

Any person filing an application with the Commission shall, at the same time, give written notice thereof by certified mail to the owner, if other than the applicant, and to all abutters according to the most recent records of the assessors, including those across a traveled way or brook, stream or pond and including any in another municipality. The notice to abutters shall include a copy of the application with the plans, or shall state where plans may be examined free of charge. When a person filing an application is other than the owner, the notice of hearing and the permit shall be sent by the Commission to the owner as well as to the applicant. In its discretion, the Commission may waive the giving of notice to abutters by certified mail.

4.3 Hearing

The Commission shall conduct a public hearing on any application or request for determination and shall give public notice, at the expense of the applicant, not less than five working days prior to the hearing in a newspaper of general circulation in the Town of Manchester.

The Commission shall commence the public hearing within 35 days of receipt of a completed application or request for determination. The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing. The Commission may, in its discretion, combine its hearing under this by-law with the hearing conducted under the Wetlands Protection Act, M.G.L. Ch. 131, Section 40.

The Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans deemed necessary by the Commission to effectuate the purposes of this by-law, or comments and recommendations of boards and officials listed in Section 6. In the event the applicant objects to a continuance or postponement, the hearing shall be closed, and the Commission shall act based on the information available.

SECTION 5

Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have significant or cumulative adverse effects upon the interests protected by this by-law. 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 6

Coordination with Other Boards

Any person filing a permit application with the Commission shall provide a copy thereof at the same time, by certified mail or hand delivery to the Town Clerk, the Board of Selectmen, Water and Sewer Commission, Planning Board, Board of Appeals, Board of Health, Director of Public Works and Building Inspector. The Commission shall not take action until 14 days have elapsed from receipt of notice by such boards and officials. The Commission shall consider but shall not be bound by any comments or recommendations received in writing from such Board or officials prior to close of the public hearing. The applicant shall have the right to receive any such comments and recommendations, and to respond to them at the hearing.

SECTION 7

Permits and Conditions

If, after the public hearing, the Commission determines that the activities which are the subject of the application will or are likely to have a significant or cumulative adverse effect upon the interests protected by this by-law, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it so determines and issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those interests, and all work shall be performed in accordance with the conditions.

If, after the public hearing, the Commission determines that the activities, which are the subject of the application, will not have a significant or cumulative adverse effect upon the interests protected by this by-law, the Commission, within 21 days of the close of the hearing shall issue a permit for the activities requested. If it so determines, the Commission may impose conditions which it deems necessary or desirable to protect those interests, and all work shall be performed in accordance with the conditions.

The Commission is authorized to deny a permit for failure to meet the requirements of this by-law: 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 adverse effects upon the interests protected by this by-law; or when the Commission determines that no conditions are adequate to protect those interests. The Commission shall consider any demonstrated hardship to be suffered by the applicant because of denial, but demonstration of hardship shall not limit the Commission's authority to deny a permit or impose conditions.

A permit shall expire three years from the date of issuance. Any permit may be renewed, in the discretion of the Commission, for additional one year periods, provided that a request for renewal is received in writing by the Commission prior to expiration.

For cause, the Commission may revoke or modify a permit issued under this by-law after notice to the permit holder and the public and a public hearing. The permit holder shall be afforded an opportunity to participate in the hearing.

The Commission, in its discretion, may combine the permit or other disposition of an application issued under this by-law with its action under the Wetlands Protection Act.

No work proposed in any application shall be undertaken before the permit issued by the Commission with respect to such work has been recorded in the Registry of Deeds (or, if work is proposed upon registered land, in the registry section of the land court for the district in which the land lies), and the holder of the permit has certified in writing to the Commission that the permit has been so recorded.

SECTION 8 Regulations

After public notice and hearing the Commission shall promulgate rules and regulations to effectuate the purposes of this by-law. The regulations shall include a schedule of fees for applications and requests for determination; such fees may include a requirement, in appropriate circumstances for payment of engineering or other consultant fees to assist the Commission. Failure by 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 effect of this by-law.

SECTION 9 Definitions

The following definitions shall apply in the interpretation and implementation of this by-law.

9.1 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 by-laws, administrative agency, public or quasi-public corporation or body, the Town of Manchester, and any other legal entity, its legal representatives, agents, or assigns.

9.2 The term “alter” shall include, without limitation, the following activities when undertaken to, upon, within, affecting, or within one hundred feet of resource areas protected by this by-law:

- (a) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (b) Changing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or 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) Placing of fill, or removal of material, which would alter elevation;
- (f) Driving of piles, erection of buildings or structures of any kind;
- (g) Placing of obstructions in water;
- (h) Destruction of plant life including cutting of trees;
- (i) Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- (j) Any activities, changes or work, which may cause or tend to contribute to pollution of any body of water or groundwater;
- (k) Application of pesticides or herbicides.

9.3 The Commission may adopt in its regulations additional definitions not inconsistent with this by-law.

SECTION 10 Security

As part of a permit issued under this by-law, 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 by the permit 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;
- (b) By 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 Manchester, 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 authority to enter upon privately owned land for the purpose of performing their duties under this by-law and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary.

The Commission shall have the authority to enforce this by-law, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Upon request of the Commission, the Board of Selectmen and Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this by-law, or permits issued pursuant to this by-law, shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the by-law, or permit violated shall constitute a separate offense.

In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in M.G.L. Ch. 40, Section 21D.

SECTION 12 Severability

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision, nor shall it invalidate any permit or determination previously issued (adopted 1987; amended 1999).