

Section 11-7  
**WETLANDS PROTECTION BY-LAWS**

**Section 1. Purpose**

The purpose of this by-law is to protect the wetlands, related water resources, and adjoining land areas in the Town of Holbrook by controlling activities likely to have a significant or cumulative effect upon the important public values of those areas, which include, without limitation, the following: public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention, water pollution control, fisheries, wildlife habitat, agricultural, aquaculture, recreation values and the historic and natural scenic character of wetland resource areas, watercourses, lakes and ponds deemed important to the community (collectively, the "interests protected by this by-law").

**Section 2. Jurisdiction**

Except as permitted by the Holbrook Conservation Commission ("The Commission") or as provided in this by-law, no person shall remove, fill, dredge, build upon, degrade, or otherwise alter the following resource areas: any bank, freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, reservoir, lake, pond, creek, river or stream, or any land under said waters or any land subject to flooding or inundation by groundwater or surface water, or any land within 100 feet of any of the aforesaid resource areas (collectively, the "resource areas protected by this by-law").

**Section 3. Exceptions**

The application and permit required by this by-law 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 and/or used to provide electric, gas, water, telephone, telegraph and other telecommunication services, provided that written notice has been given to the Commission prior to the commencement of the work, and provided that the work conforms to performance standards and design specifications in any regulations adopted by the Commission.

The application and permit required by this by-law shall not be required for work performed for normal maintenance or improvement of land in agricultural use, provided that written notice has been given to the Commission prior to the commencement of work, and provided that the work conforms to the performance standards and design specifications in regulations adopted by the Commission.

The application and permit required by this by-law shall not apply to emergency projects necessary for the protection of 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; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 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; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this by-law. 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.

Other than stated in this section, the exceptions provided in the Wetlands Protection Act, G.L. c131, s40, and Regulations, 310 CMR 10.00, shall not apply under this by-law.

**Section 4. Application for Permits and Requests for Determination**

Written application shall be filed with the Commission to perform activities affecting resource areas protected by this by-law. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this by-law. No activities shall commence without receiving and complying with a permit issued pursuant to the by-law.

In no case shall more than 50% of the tree cover be removed for any 100-foot long section of Buffer Zone, except in case of hardship where the applicant can demonstrate that no reasonable alternative exists. Tree cover is measured, for purposes of this section, as the basal area of trees with a 5-inch or greater DBH (diameter at breast height).

Adopted: STM/June 19, 2000/Article 13

The Commission in an appropriate case may accept as the permit application and plans under this by-law the Notice of Intent and plans filed under the Wetlands Protection Act, G.L. c131, s40, and Regulations, 310 CMR 10.00.

Any person desiring to know whether or not a proposed activity or an area is subject to this by-law may in writing request a determination from the Commission. Such a request for determination shall include information and plans as are deemed necessary by the Commission for the review of the proposed work.

At the time of a permit application or a request for determination, the applicant shall pay a filing fee specified in the regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act, G.L. c131, s40, and Regulations, 310 CMR 10.00.

## **Section 5. Fees**

### **Section 5.1 Administrative Fee**

The Commission is authorized to include in any regulations adopted under this by-law a fee schedule imposing fees for permits, determinations, and certificates of compliance. Such fees must be based on reasonable estimate of the actual costs incurred by the Commission in carrying out its duties under this by-law, taking into account any fees provided under the Wetlands Protection Act. Failure to pay any fee required by regulations duly promulgated by the Commission shall be grounds for denial of the application.

### **Section 5.2 Consultant Fees**

The Commission is authorized to require the 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 any application. The maximum consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be according to the following schedule:

<u>Project Cost</u>	<u>Maximum Fee</u>
Up to \$100,000	\$1,000.00
\$100,001-\$500,000	\$2,500.00
\$500,000 and over	\$5,000.00

Amended: STM/June 19, 2000/Article 11

The project cost means the estimated, entire cost of the project including, but not limited to, building construction, site preparation, landscaping, and all site improvements. The consultant fee shall be paid pro-rata for that portion of the project cost applicable to those activities within resource areas protected by this by-law. The project shall not be segmented to avoid being subject to the consultant fee. The applicant shall submit estimated project costs at the Commission's request, but the lack of such estimated project costs shall not avoid the payment of the consultant fee.

Such consultant services may include, without limitation, the delineation and survey of wetland resource areas, analysis of resource area values, hydrogeological and drainage analysis, evaluation of wildlife habitat studies, and legal services. The Commission is authorized to charge the applicant for said fee based upon its reasonable finding that the additional information acquirable only through outside consultants would be necessary for the making of an objective decision, and when the application or request for determination proposes any of the following:

- (a) the alteration of more than 2,500 square feet or more of any land under a water body or freshwater wetlands or land subject to flooding;
- (b) the alteration of 50 linear feet or more of the bank of any water body or waterway;
- (c) the alteration of 1,000 square feet or more of the buffer zone; or
- (d) the creation or elevation of any point source discharge, detention or retention basin, water control structure or wetland replication area.

Said fee may be requested of the applicant within thirty (30) days of the filing of the application, or from the last amendment thereto. In its request, the Commission shall identify the consultant it has selected and include an estimate of the charges for the proposed services. The applicant may appeal from the selection of the consultant to the Board of Selectmen within ten (10) days of receiving notice from the Commission of the same. The Selectmen may set aside the selection of the consultant only if (1) the consultant lacks sufficient qualifications to perform the work or has a conflict of interest, or (2) the Commission lacked reasonable grounds to conclude that the criteria for the hiring of a consultant have been met.

Any fees paid to the Commission under this section shall be placed into a professional services conservation account, and may be expended by the Commission for the designated services without further appropriation. Any unused portion of said fee shall be returned to the applicant within thirty (30) days of the issuance of the permit or determination.

### **Section 5.3 Waiver/Non-Applicability of Fees**

No application or consultant fees shall be due from the Town of Holbrook in connection with any project performed by the Town or on its behalf.

### **Section 5.4 Offset User Fee Account**

The town hereby accepts G.L. c44, s53E for the purpose of administering jointly the filing fee and professional services conservation account provision of this by-law. Amounts received as filing fees shall be deposited in the offset user fee account established hereunder, and may be expended by the Commission for the purposes of performing its duties under this by-law.

### **Section 6. Notice and Hearings**

Any person filing a permit application or a request for determination with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters and others deemed necessary at 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 100 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 permit application or request, with plans, or shall state where copies may be examined and obtained by abutters. Amended: ATM/May 19, 2003/Article 32

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 permit application or request for determination, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the Town of Holbrook.

The Commission shall commence the public hearing within 21 days from receipt of a completed permit application or request for determination, unless an extension is authorized in writing by the applicant.

The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon, unless an extension is authorized in writing by the applicant.

The Commission in an appropriate case, may combine its hearing, under this by-law with the hearing, conducted under the Wetlands Protection Act, G.L. c131, s40, and Regulations, 310 CMR 10.00. Notice of a hearing so combined shall not be considered defective solely because it fails to make reference to this by-law.

The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearings, which may include receipt of additional information offered by the applicant and others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in Section 9: If the land is snow covered or frozen on the date of a scheduled inspection to an extent which, in the judgment of the Commission prevents adequate inspection, the action required by the Commission may be postponed until such time as the ground is free of snow and thawed and new inspection(s) can be scheduled and completed. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available. Amended: STM/June 19, 2000/Article 12

### **Section 7. Burden of Proof**

The applicant shall have the burden of proving by a preponderance of the credible evidence, that the work proposed in the permit application will not have unacceptable significant or cumulative affect 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 such permit or to grant a permit with conditions. Amended: ATM/May 19, 2003/Article 31

## **Section 8. Permits and Conditions**

If, after said hearing, the Commission determines that the activities which are the subject of the permit application are likely to have a significant or cumulative effect upon the interest protected by this by-law, the Commission, within 21 days of the close of the public hearing or such further time as the Commission and the applicant shall agree on, shall issue or deny a permit for the activities proposed. If it issues a permit, the Commission shall impose condition which it deems necessary or desirable to protect those interests, and all work shall be done in accordance with those conditions.

The Commission is empowered 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 unacceptable significant or cumulative effects upon the interests protected by this by-law; and where no conditions are adequate to protect those interests. Due consideration shall be given 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. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the Commission prior to expiration of the original permit.

For good cause the Commission may revoke or modify a permit or determination issued under this by-law after notice to the holder of the permit or determination, notice to the public, abutters, and town boards, pursuant to Section 5 and 6, and a public hearing.

The Commission in an appropriate case may combine the permit or determination issued under this by-law with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act, G.L. c131, s40, and Regulations, 310 CMR 10.00.

No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Norfolk County Registry of Deeds or, if the land affected is registered land, in the Norfolk County registry district of the land court, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded.

## **Section 9. Coordination With Other Boards**

Any person filing a permit application or request for determination of applicability shall provide a copy thereof to the Planning Board, the Board of Health and Board of Selectmen. If a permit is required from the Board of Appeals, the applicant shall also furnish a copy to that Board.

The Commission shall, to the extent practicable, coordinate with any other Board reviewing the project, and having similar authority to recover its consulting fees from the applicant, in an effort to avoid duplication of consulting services.

## **Section 10. Security**

As part of a permit issued under this by-law, the Commission may require, in addition to any security required by any other town or state board, commission, agency or officer, that the performance and observance of the conditions imposed hereunder 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, sufficient in the opinion of the Conservation Commission to secure performance of the conditions and observance of the safeguards of such permit, to be released upon the issuance of a certificate of compliance for work performed pursuant to the permit; or
- (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 Commission whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

## **Section 11. Regulations**

The Commission shall promulgate after due notice and public hearing Rules and Regulations to effectuate the purposes of this by-law. 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.

At a minimum these regulations shall define key terms in this by-law not inconsistent with the by-law and procedures governing the amount and filing of fees.

## **Section 12. Enforcement**

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this by-law, or cause, suffer, or allow such activity to continue or allow such fill or other alteration to be left in place, without the required authorization pursuant to this by-law.

The Commission, its agents, officers, and employees shall have authority, with prior approval from the property owner or pursuant to court process, 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 authority to enforce this by-law, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Any person who violates provisions of this by-law may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations.

Upon request of the Commission, the Board of Selectmen and the Town Counsel shall have the authority to take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall have the authority to 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 regulations, permits, or administrative orders issued thereunder shall be punished by a fine of not more than \$300, upon approval by the Board of Selectmen. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the by-law, constitute a separate offense.

## **Section 13. Appeals**

A decision of the Commission shall be reviewable in the Superior Court, in action filed within 60 days thereof, in accordance with the General Laws Chapter 249, Section 4.

## **Section 14. Relation to Wetlands Protection Act**

This by-law is adopted under the Home Rule Amendment of the Massachusetts Constitution and The Home Rule Statutes, independent of the Wetlands Protection Act, G.L. c131, s40, and Regulations, 310 CMR 10.00, thereunder.

## **Section 15. Severability**

The invalidity of any section or provision of this by-law shall not invalidate any other section or provision thereof, nor shall it invalidate any permits or determinations which have previously been issued.

## **Section 16. Effective Date**

This by-law shall take effect pursuant to General Laws, Chapter 40, Section 32, and shall apply to all applications filed on or after that date and to any subsequent procedures related thereto.

## **Section 17. Definitions**

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

The term "person" shall include any individuals, group of individuals, associations, partnerships, corporations, companies, business organizations, trusts, estates, Commonwealth of Massachusetts when subject to town by-laws, any public or quasi-public corporation or body when subject to town by-laws or any other legal entity, including the Town of Holbrook or its legal representative, agents or assigns.

The term "freshwater wetlands" shall mean any area of at least 2500 square feet where surface water and/or groundwater, or ice provide a significant part of the supporting substrate for at least five months of the year and which supports a plant community dominated (at least 50%) by wetland plant species. Bogs, marshes, wet meadow, swamps and vernal pools are all freshwater wetlands. For the purposes of this by-law, freshwater wetlands do not need to border water bodies in order to be regulated.

The term "alter" means to change the conditions of any area subject to protection by this by-law and shall include but not be limited to one or more of the following actions upon areas described in this by-law:

- (a) the removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind;
- (b) the changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood storage retention areas;
- (c) the drainage, disturbance or lowering of the water level or water table;
- (d) the dumping, discharging or filling with any material which could degrade the water quality;
- (e) the driving of piling, erection of buildings or structures of any kind;
- (f) the dumping, discharging or filling with any material which may degrade water quality;
- (g) the placing of any object or obstruction whether or not it interferes with the flow of water;
- (h) the destruction of plant life, including the cutting of trees;
- (i) the changing of water temperature, biochemical oxygen demand and other natural characteristics of the receiving water;
- (j) any activities, changes or work which pollutes any body of water or groundwater;
- (k) the application of pesticides or herbicides in a freshwater wetland or within the 100' buffer zone of the freshwater wetland.

Except as otherwise provided in this by-law or in regulations of the Commission, the definitions of terms in this by-law shall be set forth in the Wetlands Protection Act, G.L. c131, s40, and Regulations, 310 CMR 10.00, thereunder, which are available for inspection

*Adopted: ATM/May 2, 1994/Article 18*

*As Amended: STM/June 19, 2000*

*As Amended: ATM/May 19, 2003*

## Section 11-8 CONTROL OF BACKFLOW AND CROSS CONNECTION

### **I. PURPOSE**

- A. To protect the public potable water supply served by the Holbrook Public Works Department from the possibility of contamination or pollution by isolating such contaminants or pollutants that could backflow or backsiphon into the public water system.
- B. To promote the elimination or control of existing cross connections, actual or potential, between its customers in-plant potable water system and Non-potable water systems.
- C. To provide for the maintenance of a continuing program of cross connection control which will effectively prevent the contamination or polluting of all potable water systems by cross connection.