

**ARTICLE XXVIII
TOWN OF PLYMPTON WETLANDS
PROTECTION BYLAW**

I. PURPOSE

The purpose of this bylaw is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Plympton. The bylaw will control activities determined by the Commission likely to have a significant or cumulative effect on resource area values. These include but are not limited to the following (collectively known as the “resource area values protected by this bylaw”):

- public or private water supplies
- groundwater supply
- flood control
- erosion and sedimentation control
- storm damage prevention
- water quality
- prevention and control of pollution,
- fisheries, wildlife habitat, rare species habitat and rare plant and animal species,
- agriculture and aquaculture values that are important to the community

This bylaw is intended to utilize the Home Rule authority of the Town of Plympton so as to protect the resource areas under the Massachusetts Wetlands Protection Act (M.G.L. Ch.131 §40) to a greater degree, and to protect all resource areas for additional values beyond those recognized in the Wetlands Protection Act. It provides local regulations and permits additional standards and procedures stricter than those of the Wetlands Protection Act and regulations hereunder (310 CMR 10.00).

II. JURISDICTION

Except as permitted by the Commission or as otherwise prohibited in this bylaw, no person will commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise make any alteration in or within 100 feet of the following resource areas (collectively the “resource areas protected by this bylaw”):

- freshwater wetlands
- marshes
- wet meadows
- bogs
- swamps
- vernal pools
- banks
- lakes
- ponds
- lands under water bodies
- intermittent brooks, creeks and streams

- lands subject to flooding or inundation by groundwater or surface water

Except as permitted by the Commission or as otherwise prohibited in this bylaw, no person will commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise make any alteration in or within 200 feet horizontally from the mean annual high water boundary on each side the following resource areas (“riverfront area”):

- perennial rivers, streams, brooks and creeks

These resource areas shall be protected whether or not they border surface waters.

Except as authorized by the Commission as otherwise prohibited in this bylaw, no activity or alteration shall be permitted within a twenty-five foot (25’) “no touch zone” between any wetland resource area protected by this bylaw and any proposed site disturbance. Nothing herein shall preclude the maintenance of an existing structure located within the “no touch zone.”

The Commission may allow activities upon an express determination that the applicant has made a clear and convincing showing that the proposed work in the “no touch zone” will not adversely affect the resource area protected by this bylaw.

The jurisdiction of this bylaw does not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture. This includes work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the Wetlands Protection Act Regulations (310 CMR 10.04).

III. EXEMPTIONS AND EXCEPTIONS

The applications and permits required by this bylaw will not be required for work performed for normal maintenance or improvement of land in agricultural and aqua cultural use as defined by the Wetlands Protection Act regulations (310 CMR 10.04).

The applications and permits required by this bylaw will not be required for 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 bylaw.

The applications and permits required by this bylaw will 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 telecommunication services, or work ordered to be performed by a state or federal agency, provided that written notice has been given to the Commission prior to

commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

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 bylaw, the exceptions provided in the Wetlands Protection Act (M.G.L. Ch. 131 §40) and Regulations (310 CMR 10.00) shall not apply under this bylaw.

IV. APPLICATIONS AND FEES

Applications

Written permit applications shall be filed with the Commission to perform activities affecting resource areas protected by this bylaw. The application shall include such information and plans as are required by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. The Applicant shall commence no activities until receiving and complying with a permit issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the application and plans under this bylaw any application and plans filed under the Wetlands Protection Act (M.G.L. Ch. 131 §40) and regulations (310 CMR 10.00), but the Commission is not obliged to do so.

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 of Applicability (RDA) or Abbreviated Notice of Resource Area Delineation (ANRAD) filed under the Act will include information and plans as are deemed necessary by the Commission.

Fee Schedule

Application Fees

At the time of application, the applicant will pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act and regulations.

Consultant Fees

Pursuant to M.G.L. Ch. 44 §53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects. Such funds will be deposited with the town treasurer, who will create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected will be paid from this account, and expenditures may be made at the sole discretion of the Commission. Any consultant hired under this provision will be selected by, and report exclusively to, the Commission. The Commission will provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice will be deemed to have been given on the date mailed by certified mail or hand-delivered. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within ten (10) business days of the request for payment shall be reason for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing.

The applicant may appeal the selection of an outside consultant to the select board, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications will consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant will make such an appeal in writing, and must be received within ten (10) business days of the date that request for consultant fees was made by the Commission. Such appeal will extend the applicable time limits for action upon the application.

V. NOTICE AND HEARINGS

Any person filing a permit application, RDA, ANRAD or other request with the Commission will at the same time give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors. This includes owners of land directly opposite on any public or private street or way, and abutters to the abutters within 200 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date, if known. The notice to abutters also states where copies may be examined and obtained by abutters. An affidavit from 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 will be sent by the Commission to the owner as well as to the person making the request.

The Commission will conduct a public hearing on any permit application, RDA, or ANRAD with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the municipality. The Commission will commence the public hearing within 21 days from receipt of a completed permit application, RDA, or ANRAD unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for

reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion.

The Commission will issue a permit, other order 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 bylaw with the hearing conducted under the Wetlands Protection Act (M.G.L. Ch.131 §40) and regulations (310 CMR 10.00).

Coordination with Other Boards

Any person filing a permit application or RFD with the Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, Director of Public Works, and Building Inspector. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality, if the application or RFD pertains to property within 200 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

VI. CONDITIONS AND PERMITS

Issuance of Permits

If the Commission, after public hearing, determines that the activities which are subject to the permit application, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative effect on the resource area, values protected by this bylaw, the Commission, within 21 days of the close of the hearing will issue or deny a permit for the activities requested. The Commission may also take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission may also take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities. The Commission may impose conditions which the Commission deems necessary or desirable to protect the resource area values, and all activities will be conducted in accordance with those conditions.

Denial of Permits

Where no conditions are adequate to protect said resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of this bylaw. The Commission may also deny a permit for failure to submit necessary information and plans requested by the Commission; for failure to comply with the procedures, design specifications, performance standards, and other requirements in regulations of the Commission; or for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this bylaw.

Revocation of Permits

For good cause the Commission may revoke any permit, or any other order, determination or other decision issued under this bylaw after notice to the holder, the public, abutters, and town boards, pursuant to §V and §VI, and after a public hearing.

Presumed Importance of the Buffer Zone

In reviewing activities within the buffer zone, the Commission will presume the buffer zone is important to the protection of other resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat.

Presumed Importance of Riverfront Area/Practicable Alternatives

In reviewing activities within the riverfront area, the Commission will presume the riverfront area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this bylaw, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. The Commission will regard as practicable an alternative which is reasonably available and capable of being carried out after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

Limited Waiver of Performance Standards

The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after a public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

Avoidance of Wetlands Loss or Alteration

The Commission may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw.

To prevent resource area loss, the Commission will require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication.

Wildlife Habitat Study

The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless the type of resource area or the amount or type of alteration proposed. The decision will be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species in the area. The work will be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).

Vernal Pools

The Commission will presume that all areas meeting the definition of "vernal pools" under §VIII of this bylaw, including the adjacent area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations.

Expiration

A permit, Determination of Applicability (DOA), or Order of Resource Area Delineation (ORAD) will 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 for an additional three-year period, provided that a request for a renewal is received in writing by the Commission thirty (30) days prior to expiration. Notwithstanding the above, a permit may identify requirements which will be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and will apply to all present and future owners of the land.

Amendments to permits, DOAs, or ORADs will be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.

Coordination with Other Permits

The Commission in an appropriate case may combine the decision issued under this bylaw with the permit, DOA, ORAD, or Certificate of Compliance (COC) issued under the Wetlands Protection Act and regulations.

Recording

No work proposed in any application will be undertaken until the permit, or ORAD issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded. If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.

VII. REGULATIONS

After public notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this bylaw, effective when voted and filed with the town clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law will not act to suspend or invalidate the effect of this bylaw. At a minimum these regulations shall reiterate the terms defined in this bylaw, define additional terms not inconsistent with the bylaw, and impose filing and consultant fees.

VIII. DEFINITIONS

Except as otherwise provided in this bylaw or in associated regulations of the Commission, the definitions of terms and the procedures in this bylaw shall be as set forth in the Wetlands Protection Act (M.G.L. Ch. 131 §40) and regulations (310 CMR 10.00).

The following definitions shall apply in the interpretation and implementation of this bylaw.

Agriculture shall refer to the definition as provided by M.G.L. Ch. 128 §1A.

Alter shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind
- B. Changing of preexisting 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, expansion or repair of buildings, or structures of any kind
- G. Placing of obstructions or objects in water
- H. Destruction of plant life including cutting or trimming of trees and shrubs
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters
- J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater
- K. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

Bank shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

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 agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

Plans means such data, maps, engineering drawings, calculations, specifications, schedules and other materials, if any, deemed necessary by the Commission to describe the site and the activity, to determine the applicability of the Bylaw or to determine the impact of the proposal upon the interests identified in the bylaw. It is the responsibility of the applicant to ensure that the plans accurately depict all wetland resource areas.

Pond shall follow the definition of 310 CMR 10.04, except that the size threshold of 5,000 square feet will apply.

Rare Species will include, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless whether the site in which they occur has been previously identified by the Division.

Vernal Pool will include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools will be 100 feet outward from the mean annual high-water line defining the depression, but will not include existing lawns, gardens, landscaped or developed areas.

IX. SECURITY

As part of a permit issued under this bylaw, 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 thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or both of the methods described below:

- A. By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit.
- B. By accepting 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 this municipality whereby the permit conditions will be performed and observed before any lot may be conveyed other than by mortgage deed. This method will be used only with the consent of the applicant.

X. ENFORCEMENT

No person will remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized

fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

With approval of the owner, The Commission, its agents, officers, and employees will have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission will have authority to enforce this bylaw, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Upon request of the Commission, the select board and town counsel will take legal action for enforcement under civil law. Upon request of the Commission, the chief of police will take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, will have authority to assist the Commission in enforcement.

Any person, who violates any provision of this bylaw, or regulations, permits, or administrative orders issued there under, will be punished by a fine levied by the Commission. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, will constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

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 will 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, will be brought against such person unless commenced within three (3) years following date of acquisition of the real estate by such person.

XI. BURDEN OF PROOF

The applicant for a permit will 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 effect upon the resource area values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden will be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

XII. APPEALS

A decision of the Commission shall be reviewable in the superior court in accordance with M.G.L. Ch. 249 §4.

XIII. RELATION TO THE WETLANDS PROTECTION ACT

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (M.G.L. Ch. 131 §40) and regulations (310 CMR 10.00) there under. It is the intention of this bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements will be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations.

XIV. SEVERABILITY

The invalidity of any section or provision of this bylaw will not invalidate any other section or provision thereof, nor will it invalidate any permit, approval or determination which previously has been issued.