



## ESSEX CONSERVATION COMMISSION

30 Martin Street, Essex MA 01929

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### Frequently Asked Questions regarding the May 1 Town Meeting Warrant Articles 16 & 17

Q: In a sentence, how would you describe what the proposed Conservation Bylaw is seeking to do?

A: The bylaw seeks to streamline processes, establish a fee structure, and promote transparency and community involvement.

Q: How does the proposed bylaw try and accomplish those goals? How does it differ from the status quo under the state Wetlands Protection Act and regulations? What changes will this bring, and what stays the same?

A: First and foremost, contrary to some claims that have been made online, the bylaw maintains the existing jurisdiction defined by the MA Wetlands Protection Act and regulations. The resource areas within the scope of the proposed bylaw are those that are already regulated at the state level –this bylaw *does not regulate additional resource areas or expand jurisdiction*.

The proposed bylaw differs from the status quo in three main areas...

First, the bylaw clarifies exemptions and exceptions for minor activities in the buffer zone (100 feet from certain resource areas) and specifies those minor activities that do not require filing a request for determination of applicability and appearance before the Commission. This should streamline the process of navigating the state regulations, by clearly spelling out when Commission oversight is necessary. As a further step to clarify areas *already under Commission jurisdiction and subject to the Commission's discretionary oversight*, the bylaw will also allow the Commission to publish rules and regulations. The intention here is not to expand the authority of the Commission; merely to codify policies and provide guidance where possible in order to shorten the timetable of working through the Wetlands Protection Act process.

Second, the proposed bylaw establishes application fees and fines. In its review of other town's bylaws the Commission noted that most towns have application fees and fines, and that they are typically much higher than the ones proposed here. Application fees will help partially offset the ongoing costs of the Conservation Commission's professional staff (an Agent and Clerk). Fines are a rarely used enforcement tool and the Commission doesn't anticipate they would be used often. Under the state rules, the Commission can issue cease and desist orders, and with the bylaw the Commission retains that ability, but when the clock is running and damage to sensitive resource areas is ongoing, this tool is insufficient. The ability to levy a fine for non-compliance is thus necessary to give the Commission a more urgent means to enforce its authority. Under the status quo, the only option available to the Commission beyond a cease-and-desist letter is to hire counsel and seek enforcement of the same in court—placing the cost burden of enforcement



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upon the town. Most enforcement issues are amicably and quickly resolved, however the ability to impose a fine gives the Commission another less-drastic and costly option versus the status quo.

Lastly, the proposed bylaw increases abutter notification from 100 to 300 feet for “Notices of Intent” (NOIs). Generally, NOIs are the more complicated projects that come before the Commission and are often associated with greater potential impact on valuable resource areas. In the last fiscal year, 19 NOIs were submitted. The purpose of increasing abutter notification is two-fold: promoting transparency and further community involvement. In the past the Commission has seen situations where residents beyond-100 feet would have liked notification of a project. The expansion to 300-foot abutter notification seeks to address that, and it also seeks increased resident participation. It is noteworthy that this expansion of abutter notification does not represent an expansion of the Commission’s jurisdiction or the size of the zone within which its oversight applies.

### Q: What was the Conservation Commission’s process in drafting and ultimately proposing the Conservation Bylaw?

A: In its five-year strategic plan, the Essex Strategic Planning Committee established as a town-priority that the Conservation Commission should establish a bylaw to provide additional enforcement capability to the Massachusetts Wetlands Protection Act. Over the last six months the Conservation Commission held nine public meetings where it considered and drafted the proposed bylaw. During this process, the Commission reviewed other town’s bylaws, compared them, and weighed different options against their applicability and feasibility in Essex.

In addition, the Conservation Commission held two public meetings in the last month where it presented the proposed bylaw, took public comment, and answered questions from the public on the bylaw. Many of these FAQs are the result of that process.

### Q: Why is there an article in the Warrant to reduce the Conservation Commission from seven to five members? [updated as of 4/25, below]

A: The Conservation Commission has had vacancies for six months, and has only received one letter of interest. The prospective volunteer quickly withdrew themselves from consideration. As currently slated 4 of the 5 seated Commissioners must be present in order to have a quorum. As five volunteers with full time jobs, we frequently run into quorum issues and we want to assure that we can still meet and move projects forward in a timely manner. Other towns, like Rockport, have not been able to hold meetings and projects are backed up. See,



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[https://www.gloucestertimes.com/news/rockport-conservation-commission-inactive-for-three-months-unable-to-meet-quorum/article\\_07267ab4-fc90-11ec-8804-3322f366bf6d.html](https://www.gloucestertimes.com/news/rockport-conservation-commission-inactive-for-three-months-unable-to-meet-quorum/article_07267ab4-fc90-11ec-8804-3322f366bf6d.html). We want to avoid that at all costs so we inquired whether there was an option to have a quorum determined by the majority of members then-seated (I.e. three of five, four of six, etc.). Counsel advised that there was no such option available, and the only way to accomplish a quorum with three was to reconstitute the Commission to five members.

Our preference is to have two more volunteers immediately seated, but due to a prolonged lack of interest we felt it prudent to bring the question to you all. Is it preferable to move forward with quorum concerns, or make it so a meeting can be held with three members present? We want your (and our) projects to move forward apace, and not get bogged down for three weeks if 4/5s of us cannot attend a meeting.

**UPDATE: At our meeting on April 25<sup>th</sup>, the Conservation Commission decided to postpone Article 16<sup>th</sup> indefinitely. The motion will not be proposed by the Conservation Commission at Town Meeting. While quorum issues still exist, we are hopeful our two present vacancies will be filled. If you are interested in volunteering, please contact us at [conservation@essexma.org](mailto:conservation@essexma.org) or reach out to the Board of Selectmen.**

Q: Is the proposed bylaw increasing the Conservation Commission's jurisdiction regarding resources areas such as bordering vegetated wetlands? [updated 4/25, below]

A: No. The jurisdictional statement in section II of the proposed bylaw mirrors the jurisdictional statement of the Wetland Protection Act, section 10.02. The resource areas subject to the proposed bylaw are "any areas subject to protection as defined in the Massachusetts Wetlands Protection Act and the State Regulations, including (a list of the areas identified in the Act and regulations)." The 100-foot buffer zone already exists and is not expanded beyond 100 feet as it is in some other town's bylaws. The 100-foot buffer is not new.

**UPDATE: In order clarify the Commissions intent on this issue and to avoid any doubt that the jurisdiction of the proposed bylaw mirrors the Massachusetts Wetlands Protection Act and the State Regulations, the jurisdictional statement will be amended by motion at Town Meeting in the following manner (including the indicated deletion of the list of areas identified in the Act and regulations):**

### *Jurisdiction*

*Except as provided by the Commission or as otherwise allowed by this Bylaw or the regulations promulgated pursuant thereto, no person shall remove, fill, dredge, build upon, degrade, discharge into, pollute, or otherwise alter the following resource areas: any areas subject to*



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*protection as defined in the Act and the State Regulations (310 CMR 10.02). , including any coastal and freshwater wetlands, marsh, wet meadow, bog, swamp, vernal pool, bank, reservoir, lake, pond of any size, beach, dune, estuary, river, stream, brook or creek whether perennial or intermittent, land under a water body, land subject to flooding or inundation by groundwater or surface water, land subject to tidal action, coastal storm flowage, or flooding, and land adjoining these resource areas out to a distance of 100 feet — known as “the buffer zone.”*

Q: Is there a “new 300-foot proposed buffer zone”?

A: No. As noted above, the 300-foot reference in the proposed bylaw is for abutter notification in certain instances, not a buffer zone.

Q: As a result of this Bylaw will more projects require a filing with the Conservation Commission and therefore will there be more cost to residents?

A: No, it is the Conservation Commission’s belief that by providing clear exceptions from filing in section III of the proposed bylaw, less—not more—filings for nominal projects will be required.

For instance, in the Conservation Commission’s experience the existing WPA regulations don’t provide clear guidance on the types of projects that are excepted from regulation and filing with the Conservation Commission. For instance, 310 CMR 10.02(1)(b) identifies minor activities that are exempt from regulation “*provided that the work is performed... in a manner so as to reduce the potential for any adverse impacts to resource areas...* ” and *sets out factors the Commission is to consider “when measuring the potential for adverse impacts... [including] the extent of the work, proximity to the resource area, the need for erosion control....”* For many nominal projects, the Commission must decide if an activity is actually exempt based on these enumerated factors. This currently would require a resident to file a Request for Determination and attend a meeting. Through the proposed bylaw, these activities are expressly exempted, and the Commission could provide guidance, through regulations, about what type of activities do not require a filing at all.

For major projects, a filing will still be required and the proposed bylaw does impose a fee structure, which will be an additional cost versus the status quo. For more information regarding the fee structure, please see our letter to the Selectman, available here:

[https://www.essexma.org/sites/g/files/vyhlif4406/f/uploads/conservation\\_bylaw\\_and\\_letter.pdf](https://www.essexma.org/sites/g/files/vyhlif4406/f/uploads/conservation_bylaw_and_letter.pdf)



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Q: Does the proposed bylaw create new filing requirements such as for additional engineering plans, surveys, or the like?

A: No. The Conservation Commission currently has discretion in reviewing a submittal about what information is necessary for it to make a determination. The proposed bylaw adopts this same status quo with greater clarity. Often an applicant's submittal is insufficient, or doesn't contain enough information for the Commission to make a determination (e.g. there are no hand drawn or professional plans). In these situations, we currently use our discretion to require the submittal of additional information of plans to make a determination and that is often accomplished through multiple appearances at meetings. Through the bylaw, we seek to eliminate many "continued" hearings and where possible prescribe any filing requirements in certain situations. The Commission believes the process will be more efficient and user friendly with these capabilities and the proposed bylaw formalizes this process.