

## **Town of Essex Conservation Commission**

### **Essex Conservation Bylaw**

#### **I. Purpose**

The purpose of this bylaw is to protect natural resources in the Town of Essex, including wetlands, water resources, flood-prone areas, and adjoining upland areas by controlling activities deemed by the Conservation Commission (“the Commission”) likely to have a significant effect, immediate or cumulative, on resource area values. These resource areas and associated activities include but are not limited to the following: public or private water supply, groundwater supply, flood control, erosion, and sedimentation control, storm damage prevention including coastal storm flowage, water quality, prevention and avoidance of pollution, protection of fisheries, shellfisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, aquaculture, and recreation values, deemed important to the community

This bylaw is intended to utilize the Home Rule authority of the Town of Essex to extend the provisions of the Massachusetts Wetlands Protection Act (“the Act”; G.L. Chapter 131, Section 40, as may be amended from time to time, to protect additional resource areas recognized by the Town as significant, to protect all resource areas for their additional values beyond those identified in the Act, and to impose—through the development of local regulations and additional standards and procedures—a framework for assigning the fees and penalties necessary to enforce both the regulations defined by the Act, 310 CMR 10.00, et seq., as may be amended from time-to-time (the “State Regulations”) and this bylaw. This framework will be subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant bylaws of the Town of Essex.

#### **II. 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 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.

Collectively, these are the "resource areas protected by this bylaw." Said resource areas shall be protected whether or not they border surface waters. The jurisdiction of this Bylaw shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the State Regulations.

### **III. Exemptions and Exceptions**

The applications required by this bylaw shall not be required in the following situations:

- A. The 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, provided that written notice and a plan of work is provided to the Commission 48 hours before the commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.
- B. Minor activities in a buffer zone per the State Regulations (310 CMR 10.02(2)(b)(2)(g) –(p)), provided that written notice is provided to the Commission before the commencement of work and provided that the work also conforms to any performance standards and design specifications in regulations adopted by the Commission.
- C. In cases of public emergency. 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 before the commencement of work or within 24 hours after the 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, an application shall be filed with the Commission for review as provided by this Bylaw. 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.

D. Other than as stated in this Bylaw, the exemptions provided in the Act and the State Regulations shall not apply under this bylaw.

#### **IV. Applications and Fees**

Except as provided in Section III, a written application ("the Application") shall be filed with the Commission to perform activities that may impact resource areas protected by this Bylaw. The Application is available from the Administrative Clerk ("the Clerk") for the Commission. The Commission may accept as the Application and the Plans under this Bylaw any Notice of Intent or Request for Determination of Applicability and plans filed under the Act and the State Regulations where they are sufficient to meet the requirements of the bylaw and any regulations promulgated thereto, but the Commission reserves the right to require additional information that may be needed to make a decision under this Bylaw.

The Application shall include such information and work plans deemed necessary by the Commission ("the Plans"), as may be further prescribed in the Commission's regulations, to describe proposed activities and their effects on the resource areas protected by this Bylaw.

Any person desiring to know whether or not a proposed activity or an area is subject to this Bylaw may apply, in writing, requesting a Determination of Applicability ("RDA") or Abbreviated Notice of Resource Area Delineation from the Commission ("ANRAD") in lieu of a full Application for Order of Conditions. The procedure for processing an Application containing only an RDA under this bylaw shall be the same as the procedure set forth in the State Regulations, 310 CMR 10.05(3) as may be amended from time to time.

No activities shall commence and no work shall begin until an Order of Conditions ("OOC") or determination of non-applicability, which may be the same as those issued under the Act, has been issued, all appeal periods have expired and said OOC if required by the Act has been recorded with the Registry of Deeds or Land Court..

All Applications submitted pursuant to this Bylaw shall be accompanied by the appropriate fee as identified in Appendix A. No Application shall be considered complete unless and until all applicable fees have been paid.

**V. Notice and Hearings – Abutter Notification to 300'**

This section shall not apply to Applications containing only Requests for Determination of Applicability.

When appropriate, the Commission may combine its hearing under this Bylaw with the hearing conducted under the Act.

Any person filing an Application with the Commission shall give written notice thereof, at the time of filing, by certified mail (return receipt requested) or hand delivery, to all abutters 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 300 feet of the boundaries of the property where work is being proposed, including any in another municipality or across a body of water. Mailing at least seven days before the public hearing shall constitute timely notice.

In addition, the notices required shall provide 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 shall also state where copies of the Application and the Plans may be examined and obtained by abutters. An affidavit of the person providing such notice attesting that such notice was provided, with a copy of the notice mailed or delivered to the abutters and a copy of the certified abutters' list obtained from the Assessor's Office shall be filed with the Commission.

When a person submitting an application is someone other than the property owner, the person submitting the Application must provide the property owner with a copy of the request, and the notice of the hearing, and submit proof of provision of those documents to the Commission.

The Commission shall conduct a public hearing on the Application within 21 days from receipt of a completed Application unless an extension is authorized in writing by the applicant. The applicant shall, at their expense, give public notice in a newspaper of general circulation in the municipality at least five business days before the hearing.

The Commission shall have the authority to request that an applicant agree 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. An applicant's refusal to agree to a requested continuance may be grounds for denial of the Application. The Commission shall issue its decision, order, or determination in writing within 21 days of the close of the public hearing thereon unless an extension is granted by the Commission.

## **VI. Burden of Proof**

The applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the Application will not have adverse effects on the interests protected by this Bylaw. The Commission may require that the applicant provide engineering drawings, hydrological analyses, or other studies necessary to support the claims contained within the Application and/or the Plans. The costs of such studies are to be borne by the applicant and the selection of a consultant to perform a required study shall be subject to the approval of the Commission.

## **VII. Permits and Conditions**

If the Commission, after a public hearing where applicable, determines that the activities described in the Application and/or the Plans, or the land and water uses that 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 calendar days of the close of the hearing, shall issue a decision. The Commission may take into account the extent to which the applicant has avoided, minimized, and/or mitigated any such effect. If it issues an Order of Conditions, the Commission may impose conditions that the Commission deems necessary or desirable to protect said resource area values. All activities shall be conducted following those conditions. Where no conditions are adequate to protect said resource area values, the Commission shall deny an Application for failure to meet the requirements of this Bylaw. It may also deny an Application for the following reasons: failure to submit necessary information and plans requested by the Commission; failure to comply with the procedures, design specifications, performance standards, and other requirements in regulations set forth by the Commission; or failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this Bylaw.

An Order of Conditions granted by the Commission shall expire three years from the date of issuance. Notwithstanding the above, the Commission at its discretion may issue an Order of Conditions expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of the time and location of work is given to the Commission.

Any Order of Conditions may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the Commission at least thirty days before expiration. Notwithstanding the above, an Order of Conditions granted by the Commission may identify requirements that shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land. For good cause, the Commission may revoke any Order of Conditions issued under this bylaw after notice to the holder, the public, and after a public hearing. Good cause is established where the permit issued under this bylaw has been improperly granted, or the holder has failed to comply with its terms and conditions.

Except as expressly provided herein or in the regulations set forth by the Commission, amendments to Orders of Conditions shall be handled in the manner set out in the Act and/or the Regulations and policies thereunder.

## **VIII. Regulations**

After a public hearing, published on the Town's website and in such other locations as may be determined by the Commission to provide adequate notice to members of the public, at least seven (7) days prior thereto, the Commission may promulgate rules and regulations to effectuate the purposes of this Bylaw, effective when voted by the Commission 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 shall not act to suspend or invalidate the effect of this bylaw. The Commission may establish in its rules and regulations design specifications, performance standards, and other measures and safeguards not inconsistent with the bylaw, and impose reasonable filing, and fines.

The Commission in its regulations may require that the applicant, at its sole cost and expense, retain an independent consultant for the purpose of providing the Commission with the data, analysis, or other information deemed by the Commission to be reasonably necessary or appropriate to assist the Commission in reviewing the application or rendering its decision, provided that said regulations are consistent with the provisions of G.L. c. 44, § 53G.

## **IX. Security**

As part of a permit issued under this Bylaw and 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, a deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertakings of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed according 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 Essex whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

**X. Enforcement and Fines**

No person shall 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 any Order of Conditions or an enforcement order issued under this bylaw.

The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land to perform their duties under this Bylaw subject to the constitutions and laws of the United States and the Commonwealth. They 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 refusal to authorize entry in connection with the review of an application shall be grounds for denial of that application.

The Commission, its agents, officers, and employees shall have the authority to enforce this Bylaw, its regulations, decisions, orders, and determinations issued thereunder by letters, phone calls, electronic communication, and other informal methods, before initiating formal enforcement proceedings.

This Bylaw may be enforced by any duly authorized agent of the Conservation Commission. Whoever violates any provision of this bylaw may be penalized by a noncriminal disposition process as provided in G.L. c.40, §21D and the Town's non-

criminal disposition bylaw. If noncriminal disposition is elected, then the non-criminal fine for each such violation, if not otherwise specified, shall be:

First Offense:	\$100
Second Offense:	\$200
Third and Subsequent Offenses:	\$300

Any person who violates the provisions of this Bylaw may be ordered to restore the property to its original condition and/or take other action deemed necessary to remedy such violations.

Any person who violates any provision of this Bylaw, or regulations, decisions, determinations, enforcement, or other administrative orders issued thereunder, may be penalized by indictment or on a complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense shall be three hundred dollars.

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 Bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

The Town may enforce this Bylaw or enjoin violations thereof through any lawful process, and the election of one remedy by the Town shall not preclude enforcement through any other lawful means.

## **XI. 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 Act and the Regulations thereunder. This Bylaw intends that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Act and the Regulations.



**XII. Definitions**

Except as otherwise specified in the Commission regulations, the terms used herein are defined as outlined in the Act, the Regulations, and Massachusetts General Law.

**XIII. Severability**

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

**XIV. Effective Date**

The effective date of this Bylaw shall be January 1 of the year following approval of the bylaw by the Attorney General and publication in accordance with G.L. c. 40, §21. Projects approved before the effective date will not be subject to the bylaw.

**APPENDIX A – Application Fees and Fines for Non-Compliance/Violation**

The following fees shall apply to all Applications submitted pursuant to this Bylaw. The fees set forth herein are in addition to any fees set forth in the Act or the State Regulations.

<b>Type</b>	<b>FEE</b>	<b>LATE FEE PENALTY</b>
APPLICATION (Unless otherwise specified)	\$50	\$50
APPLICATION for NOI (residential)	\$125	\$125
APPLICATION for NOI (commercial)	\$300	\$300
APPLICATION for Extension of Order of Conditions	\$50	\$50
APPLICATION for Certificate of Compliance	\$50	\$50