

CARLISLE NONZONING WETLAND BYLAW

13.1. PURPOSE AND JURISDICTION

- 1.1 The purpose of this Bylaw is to protect the wetland and water resources of the Town of Carlisle by regulating activity in or near wetland resource areas. Conditions shall be imposed by the Carlisle Conservation Commission (the Commission) after a public hearing at which the Commission determines that the area on which the proposed work is to be done is significant to public or private water supply, to ground water supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish, to the protection of wildlife habitat or to the protection of fisheries (collectively, the "Interests Protected by this Bylaw").
- 1.2 Except as permitted by the Commission or as provided in this Bylaw, no person shall remove, fill, dredge, or alter any bank, fresh water wetland, marsh, meadow, bog or swamp bordering any creek, river, stream, pond, or lake, any land under said waters, any land subject to flooding, or any riverfront area [collectively, the "Resource Areas Subject to Protection"].
- 1.3 Any activity proposed or undertaken within the "Buffer Zone" or Resource Areas Subject to Protection which, in the judgment of the Commission, will remove, fill, dredge or alter a Resource Area Subject to Protection under this Bylaw is subject to regulation under the Bylaw and requires the filing of a Request for Determination (Request) or Notice of Intent, Abbreviated Notice of Intent, or Abbreviated Notice of Resource Area Delineation (Notice).
- 1.4 Any activity proposed or undertaken outside the Resource Areas Subject to Protection and outside the Buffer Zone is not subject to regulation under this Bylaw and does not require the filing of a Notice of Intent unless and until that activity actually alters a Resource Area Subject to Protection under this Bylaw. In the event that such activity has in fact altered a Resource Area Subject to Protection under this Bylaw, the Commission shall impose such conditions on the activity or any portion thereof as it deems necessary to contribute to the interests protected under this Bylaw.
- 1.5 It is not the purpose or intent of the Bylaw to exceed Mass. Gen. Laws Ch. 131. Sec. 40 as amended on February 14, 1997 or the Wetland Protection Act Regulations 310 CMR 10.00 as amended on March 1, 2005 except in the following Bylaw sections: 2,10,11.

2. APPLICATIONS AND FEES

- 2.1 Any person who proposes to do work which will remove, fill, dredge or alter any Resource Area Subject to Protection under this Bylaw shall submit a Notice to the Commission which bears the signature of the owner of the subject property. Application under this Bylaw may be identical in form to a Notice of Intent filed pursuant to Mass. Gen. Laws Ch. 131, Sec. 40, and shall be sent by certified mail or hand delivered to the Carlisle Conservation Commission. Said application shall be accompanied by a filing fee set forth in the rules and regulations promulgated by the Commission and payable to the Town of Carlisle, and must be filed concurrently with or after applications for all other variances and approvals required by the Zoning Bylaw, the Subdivision Control Law, local Board of Health Regulations or any other bylaw or regulations relevant to the project. The written application shall include such plans as may be necessary to describe such proposed activity and its effect on the environment. No filing fee is required when a department or officer of the Town of Carlisle files an application for the Town.
- 2.2 Any person who desires a determination as to whether this Bylaw applies to land or work which may affect a Resource Area Subject to Protection may submit a Request for Determination of Applicability to the Commission. Requests shall be accompanied by a filing fee set forth in the rules and regulations promulgated by the Commission. The Request application may be identical in form to a Request filed pursuant to Mass. Gen. Laws Ch. 131, Sec. 40. If the person making the Request is not the owner, the applicant shall send a copy of the Request by certified mail (return receipt requested) to the owner.

Carlisle Nonzoning Wetland Bylaw

- 2.3 The receipt of such Notice or Request shall be acknowledged in writing on the face thereof and shall include the time and date so received. A person delivering said Notice by hand shall be given a receipt in writing acknowledging the time and date such filing was received.
- 2.4 Each Notice or Request filed shall be assigned a unique identification number (hereinafter "File Number") to facilitate record keeping by the Commission. Said File Number may be identical to that assigned by the Massachusetts Department of Environmental Protection.
- 2.5 Any person filing a Notice or a Request with the Commission shall give at the same time written notification thereof, by certified mail (return receipt requested) or hand delivery to the owner and all abutters at their mailing addresses shown on the most recent certified Abutters List.
- 2.6 In addition to any filing fee imposed by the rules and regulations promulgated under this Bylaw, the applicant shall reimburse the reasonable costs and expenses borne by the Commission for specific expert engineering and consulting services deemed necessary by the Commission, provided that the scope of the application meets the criteria set forth in Section 2.7 of this Bylaw. The amount of the reimbursement fee shall be based on the standard set forth in Section 2.10 of this Bylaw and shall be constrained by the following:
 - 2.6.1 For sewage disposal system repair and/or landscaping projects for an existing single family residence, a maximum reimbursement fee of ZERO DOLLARS (\$0.00) per File Number may be imposed for a Notice, Request, or request for Certificate of Compliance.
 - 2.6.2 For projects to access, construct or modify one single family residence, a maximum reimbursement fee of ONE THOUSAND DOLLARS (\$1,000.00) per File Number may be imposed for a Notice of Intent.
 - 2.6.3 For all other projects, a maximum reimbursement fee of FIFTEEN THOUSAND DOLLARS (\$15,000) per File Number may be imposed for each Notice, Request, and request for Certificate of Compliance.
- 2.7 The Commission is authorized to charge this site and/or design review reimbursement fee when the Commission determines that a Notice, Request, or Certificate of Compliance involves any of the following: 500 square feet or greater of alteration of Freshwater Wetlands; 50 linear feet or greater of alteration of a Bank, Stream or River; 500 square feet or greater of alteration of the Buffer Zone; alteration of greater than 500 square feet of Land Under Bodies of Water; discharge of any pollutants into surface or ground waters of any resource area under this Bylaw; or construction of a detention or retention basin or other drainage device.
- 2.8 Said specific expert engineering and consultant services, may include but are not limited to consultants' overhead and office expenses required to process said Notices, Requests and Certificates; copying plans and technical submittals for further review; sub-contracting for professional services; mileage; wetland survey and delineation; hydrogeologic and drainage analysis; purchase or borrowing of materials; wildlife habitat, rare species, shellfish and fisheries evaluation; and environmental or land use legal consultation.
- 2.9 Said reimbursement fee shall be paid by the applicant within thirty (30) calendars days of receipt of a written request from the Commission. Said payment may be required by the Commission at any point in reviewing or deliberating processes to pay for services rendered thus far, including prior to a final decision being rendered but not before the Commission has received the actual bills for the site and/or design review. The fee shall be paid to the town into an account of the Commission which is set up by the Treasurer for this purpose, separate and apart from all other Town monies, and which may be drawn upon by the Commission for services approved by the Commission at a public meeting. The principal shall be expended by the Treasurer at the direction of the Commission for site and/or design review costs and expenses.
- 2.10 In setting the amount of said reimbursement fee, the Commission shall utilize the following standard: the fee shall equal the amount of the actual bills for all expenses incurred for the File Number that is submitted by an expert engineer or consultant, up to the maximum amount set forth in Section 2.6 of this Bylaw.

Carlisle Nonzoning Wetland Bylaw

3. HEARINGS AND MEETINGS

- 3.1 For a Request, the Commission shall hold a public meeting within twenty-one (21) calendar days of its receipt. Notice of the time and place of the meeting shall be given by the Commission at the expense of the applicant, not less than five (5) days prior to the meeting, by publication in a newspaper of general circulation (in Carlisle) and by mailing a notice to the applicant and to the owner by certified mail (return receipt requested).
- 3.2 For a Notice, the Commission shall hold a public hearing within twenty-one (21) calendar days of its receipt. Notice of the time and place of the hearing shall be given by the Commission at the expense of the applicant, not less than five (5) days prior to the hearing, by publication in a newspaper of general circulation (in Carlisle) and by mailing a notice to the applicant.
- 3.3 A Public Hearing may be continued as follows:
 - 3.3.1 without the consent of the applicant to a date, announced at the hearing, within twenty-one (21) calendar days of receipt of the Notice;
 - 3.3.2 with the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing; or
 - 3.3.3 with the consent of the applicant for a period not to exceed twenty-one (21) calendar days after the submission of a specified piece of information or the occurrence of a specified action. The continued hearing shall be publicized in accordance with Section 3.2 of this Bylaw.

4. PERMITS AND CONDITIONS

- 4.1 For Requests, the Commission shall issue a Determination of Applicability within twenty-one (21) calendar days of receipt of said application. If, after the public meeting, the Commission determines that the area is significant to the interests Protected by this Bylaw, the Commission shall issue a positive determination and request that the applicant file a Notice. If the Commission determines that the area which is the subject of the application is NOT significant to the interests protected by this Bylaw, or that the proposed activity does not require the imposition of conditions, it shall issue a negative determination. When the person requesting a determination is other than the owner, notice of the determination shall be sent to the owner as well as to the requesting person by certified mail (return receipt requested).
- 4.2 For Notices of Intent and Abbreviated Notices of Intent, the Commission shall issue an Order of Conditions within twenty-one (21) calendar days of the close of the Public Hearing for said application. The Commission shall impose such conditions as will contribute to the protection of the Interests Protected by this Bylaw and all work shall be done in accordance with those conditions. If the Commission makes a determination that the proposed activity does not require the imposition of such conditions, the applicant shall be notified of such determination within twenty-one (21) days after said hearing. Such Notification of Nonsignificance shall be signed by the majority of the Conservation Commission and a copy thereof shall be sent forthwith to the applicant by certified mail (return receipt requested). An Order of Conditions shall be valid for three (3) years unless specifically stated otherwise. The Commission may renew an Order of Conditions for an additional one (1), two (2) or three (3) year period. If renewal of an Order of Conditions is requested, it must be received in writing by the Commission at least thirty (30) calendar days prior to the expiration date of the Order.
- 4.3 No work proposed in any application shall be undertaken until the Order of Conditions or Notification of Nonsignificance with respect to such work issued by the Commission has been recorded in the Registry of Deeds or, if the land affected thereby be registered land, in the registry section of the Land Court for the district wherein the land lies, and until the holder of the Order of Conditions certifies in writing to the Commission that the Order has been so recorded.

Carlisle Nonzoning Wetland Bylaw

- 4.4 Within twenty-one (21) days of the receipt of a written request, by the applicant or the owner of the property, for Certificate of Compliance, the Commission shall grant such request if the activity, or portions thereof, complies with the Order of Conditions and if, at the time of such request, there are no outstanding notices of violation or unsatisfied fines issued by the commission or by the Massachusetts Department of Environmental Protection against a property which is the subject of such a request. The Certificate of Compliance shall state that the activity, or portions thereof, has been completed in accordance with such Order.
- 4.5 No conditions shall be imposed, nor shall any Determination be rendered by the Commission, in reference to this Bylaw, unless the Commission meets with a quorum present.

5. EXCEPTIONS

- 5.1 The provisions of this Bylaw shall not apply to work performed in the course of 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 used to provide electric, gas, water, telephone, telegraph and other telecommunication services.
- 5.2 The Notice of Intent required in this Bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the Commonwealth which are to be performed or which are ordered to be performed by an agency of the Commonwealth or a political sub-division thereof. An emergency project shall mean any project certified to be an emergency by the Commission. If the Commission fails to act favorably within twenty-four (24) hours of receipt of a request for certification of an emergency project, said project may be so certified by the Selectmen. In no case shall any removal, filling, dredging or alteration authorized by such certification extend beyond the time necessary to abate the emergency.
- 5.3 The provisions of this Bylaw shall not apply to any mosquito control work done under the provisions of the Clause (36) of Sec. 5 of Ch. 40, of Ch. 252 or any special act; to the maintenance or improvement of land in agricultural use or in aquacultural use.
- 5.4 The provisions of this Bylaw shall not apply to maintenance dredging projects for which a license has been previously issued within ten (10) years by the Division of Waterways of the Department of Environmental Protection. The procedures set for the Mass. Gen. Laws Ch. 131, Sec. 40 for licensed maintenance dredging projects shall be utilized in administering this Bylaw.

6. REGULATIONS

- 6.1 After public notice and hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this Bylaw. 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.

7. GENERAL PROVISION, PRESUMPTIONS AND PERFORMANCE STANDARDS

- 7.1 The provision set forth in 310 CMR 10.03(1) through 10.03(6) as defined on March 1, 2005 and 310 CMR 10.51 through 10.60 as defined on March 1, 2005, shall be used for the interpretation and implementation of this Bylaw except in the event of a conflict with other provisions of this Bylaw, in which case the other provisions of this Bylaw shall take precedence.

8. SEVERABILITY

- 8.1 The invalidity of any provision or feature of this Bylaw shall not affect the validity of any other provision or feature not manifestly inseparable therefrom.

9. APPEALS

Carlisle Nonzoning Wetland Bylaw

- 9.1 During an appeal of a decision of the Commission, the findings of a concurrent Massachusetts Department of Environmental Protection review under Mass. Gen. Laws Ch. 131, Sec. 40 shall be presumed correct except in those areas in which this Bylaw specifically exceeds Mass. Gen. Laws Ch. 131, Sec. 40. For situations where this bylaw specifically exceeds Mass. Gen. Laws Ch. 131, Sec. 40, the decisions of the Commission shall be reviewable in the Superior Court in an action filed by the Applicant, any person aggrieved by the Commission's decision, any abutter, or any 10 citizens of Carlisle within 60 days thereof, in accordance with Mass. Gen. Laws Ch. 249, Sec. 4.

10. ENFORCEMENT

- 10.1 The filing of a Notice or Request shall constitute the consent of the owner and grant the authority for the Commission, its agents, officers, and employees to enter upon privately owned land for the purpose of performing their duties under the Bylaw, which may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.
- 10.2 The Commission shall have authority and duty to enforce this Bylaw, its regulations, and Order of Conditions issued hereunder by Enforcement Orders and civil and criminal court actions.
- 10.3 When the Commission determines that violation of this Bylaw has occurred, it may request the Board of Selectmen and the Town Counsel to take legal action for enforcement under civil law. In addition, the Commission may request the Chief of Police or other authorities to take legal action for enforcement under criminal law.
- 10.4 Municipal Boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- 10.5 Any person who violates any provision of this Bylaw, regulations thereunder, or Order of Conditions issued thereunder, may be punished by a fine of not more than three hundred dollars (\$300.00) per offense. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the Bylaw, regulations, or Order of Conditions violated shall constitute a separate offense.
- 10.6 In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in Mass. Gen. Laws Ch. 40, Sec. 21D, in which case the penalty shall be as follows:
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| 10.6.1 | First Offense: | \$75.00 |
| 10.6.2 | Second Offense: | \$150 |
| 10.6.3 | Third and subsequent offenses: | \$300.00 |
- 10.7 No person shall remove, fill, dredge or alter any Resource Area Subject to Protection under this Bylaw without the required authorization, 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 an Enforcement Order issued pursuant to this Bylaw. Each day such violation continues constitutes a separate offense except that any person who fails to remove unauthorized fill or otherwise fails to restore illegally altered land to its original condition after giving written notification of said violation to the Commission, shall not be subject to additional penalties unless said person thereafter fails to comply with an Enforcement Order or Order of Conditions.
- 10.8 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 Order issued under this Bylaw shall forthwith comply with any such Order or restore such properties to their condition prior to any such violations; provided, however that no action, civil or criminal, shall be brought against such person unless such action is commenced within three (3) years following the recording of the deed or the date of the death by which such properties

Carlisle Nonzoning Wetland Bylaw

wereacquired by such person. Any court having equity jurisdiction may restrain a violation of this Bylaw and enter such orders as it deems necessary to remedy such violation, upon the petition of Attorney General, the Commission, the Town of Carlisle, an owner or occupant of property which may be affected by said removal, filling, dredging or altering, or ten residents of the Commonwealth under the provision of Sec. 7(A) of Ch. 214.

11. DEFINITIONS

11.1 Unless specifically stated otherwise in this Bylaw, the definitions set forth in Mass. Gen. Laws Ch. 131, Sec. 40, as defined on February 14, 1997, and in 310 CMR as defined on March 1, 2005, shall be used for the interpretation and implementation of this Bylaw. Definitions unique to this Bylaw that shall be used for the interpretation and implementation of this Bylaw include:

11.1.1 Pond (inland) shall be defined as any open body of fresh water, either naturally occurring or man-made, with a surface area observed or recorded within the last ten (10) years of at least ten thousand (10,000) square feet, and which is never without standing water due to natural causes, except during periods of extended drought. For purposes of this definition, extended drought shall mean any period of four (4) or more months during which the average rainfall for each month is fifty (50) percent or less of the ten (10) year average for that same month. Basins or lagoons which are part of waste water treatment plans shall not be considered ponds, nor shall swimming pools or other impervious man-made retention basins.