

**REGULATIONS ADOPTED BY
THE TYNGSBOROUGH CONSERVATION COMMISSION
PURSUANT TO TOWN'S BY-LAW FOR WETLAND PROTECTION**

SECTION 1.0 INTRODUCTION

- 1.1 These regulations are promulgated by the Tyngsborough Conservation Commission, here after referred to as the "Commission", pursuant to the authority granted to it under Town of Tyngsborough, here after referred to as the "Town", General By-Law for Wetland Protection, here after referred to as the "Bylaw". These regulations shall complement the By-Law and shall have the force of law upon their effective date.

SECTION 2.0 PURPOSE

- 2.1 The By-Law establishes a public review and decision making process by which activities affecting Protected Resource Areas are to be regulated in order to contribute to the protection of the following interests:
- 2.1.1 Public or private water supply
 - 2.1.2 Ground water supply
 - 2.1.3 Flood control
 - 2.1.4 Storm damage prevention
 - 2.1.5 Other water damage prevention
 - 2.1.6 Prevention of pollution
 - 2.1.7 Protection of surrounding land and other homes or buildings
 - 2.1.8 Aquatic life or wildlife
 - 2.1.9 Protection of streams, ponds, or other bodies of water
- 2.2 The purpose of the regulations is to define and clarify that process by establishing uniform procedures and standards by which the Commission may carry out its responsibilities under the By-Law.

SECTION 3.0 DEFINITIONS

- 3.1 As defined in the Massachusetts Wetland Protection Act and/or the Tyngsborough Wetland Protection Bylaw unless otherwise noted below.

Abutter is any landowner, as determined by the most recent assessors' records, whose land abuts the property that is the subject of the Notice of Intent and abutters to the abutters within 300 feet or whose land lies directly across any street, road, river, stream, brook, or creek from the said property.

Applicant, as used in these regulations, shall mean a person giving notice of intention to remove, fill, dredge, build upon, or alter, or a person on whose behalf such a notice is filed.

RULES: GENERAL BY-LAW FOR WETLAND PROTECTION

Land Subject to Flooding or Inundation is that land which, under existing conditions, would be defined as either “Bordering Land Subject to Flooding” or “Isolated Land Subject to Flooding” in 310 CMR 10.57. Isolated Lands Subject to Flooding are protected whether or not they meet the size requirements set forth in 310 CMR 10.57(2)(b).

Protected Resource Area shall mean any bank, freshwater wetland, marsh, bog, wet meadow, swamp, creek, river, stream, pond, or lake or any land under said waters, or any land subject to flooding or inundation whether or not bordering a surface water body, or any land bordering thereon. Bordering in this context shall mean either the greater of the following: (a) 100 feet horizontally lateral from the bank of any bog, marsh, meadow, or swamp bordering on a creek, river, stream, pond, lake, or wetland; (b) 100 feet horizontally lateral from the water elevation of the 100-year storm; or (c) 200 feet horizontally lateral from the mean annual high water elevation of any perennial stream or river. Vernal pools whether or not certified by the state shall be considered as a resource area.

SECTION 4.0 PROCEDURES

4.1 Determination of Applicability

4.1.1 Any person who desires a determination as to whether the By-Law applies to any land or work to be performed thereon may submit a written Request for Determination (RDA) in duplicate to the Tyngsborough Conservation Commission. The request shall be sent by certified mail or hand delivered, and shall be in the form required under M.G.L. Ch. 131, s. 40 and 310 CMR 10.00 and shall include such additional information as the Commission may require to aid in the evaluation.

4.1.2 Within 21 days of receipt of the complete request, the Commission shall hold a hearing to consider the application filed under the By-Law. Notice of the time and place of the public hearing at which the determination will be made shall be given by the Commission at the expense of the person making the request not less than 5 days prior to such meeting by publication in a newspaper of general circulation in Tyngsborough. The applicant shall be responsible to notify all abutters. Within 21 days of closing the hearing, said determination shall be signed by a majority of the Commission, and copies thereof shall be sent by the Commission to the person making the request and to the property owner. Said determination shall be valid for 3 years from the date of issuance.

4.1.3 The decision of the Commission may be appealed according to the provisions of M.G.L. Ch. 249, s. 4.

4.2 Notice of Intent

4.2.1 Filling Procedure

4.2.1.1 Any person who proposes to do work that will remove, fill, dredge, build upon, or alter any Protected Resource Area shall submit to the Commission a Notice of Intent (NOI), consisting of application materials required for a Notice of Intent under M.G.L. Ch. 131, s. 40 and 310 CMR 10.00 and containing such additional materials as the Commission may

RULES: GENERAL BY-LAW FOR WETLAND PROTECTION

require to fully describe the proposed activity and its effect on the environment. Each such NOI shall be accompanied by a filing fee to be determined in accordance with a fee schedule established by the Commission. The Commission shall provide written notice of such applications to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health, Building Commissioner, and other Boards or Departments as the Commission deems appropriate. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality, if the application or RDA pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the NOI 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. Upon written request the applicant shall receive forthwith any comments and recommendations by the above boards or officials and may respond to the Commission in writing or at the hearing.

4.2.1.2 If the Notice of Intent is deemed by the Commission to be insufficient to fully describe the proposed activity and its effect on the environment, the Commission may, at its discretion: (a) notify the applicant, by certified mail within 10 days of receipt of the NOI, of the additional information that will be necessary to render the NOI sufficiently complete for acceptance. The filing fee shall be returned and the 21-day review period shall not begin until a complete application is submitted; or (b) inform the applicant at or prior to the public hearing of the additional information required, and offer the applicant the opportunity to continue the public hearing so that the additional information can be submitted for review.

4.2.1.3 All changes made to an Notice of Intent, Request for Determination of Applicability and/or Abbreviated Notice of Resource Area Delineation applications shall be submitted to the Conservation Office no later than 7 days prior to the next scheduled hearing.

4.2.2 Public Hearing

4.2.2.1 A public hearing shall be held by the Commission within 21 days of the receipt of said NOI. Notice of the time and place of said hearing shall be given by the Commission at the expense of the applicant not less than 5 days prior to such hearing by publication in a newspaper of general circulation in Tyngsborough. The applicant shall be responsible to notify all abutters by certified mail.

4.2.2.3 Public hearings may be continued as follows:

- (a) without the consent of the applicant, to a date, announced at the hearing; or
- (b) with the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing.

4.2.3. Order of Conditions

RULES: GENERAL BY-LAW FOR WETLAND PROTECTION

4.2.3.1 Within 21 days of the close of the public hearing, or within such further time as the Commission and the applicant shall agree on, the Commission shall either:

- (a) make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge, build upon, or otherwise alter, is not significant to any of the interests identified in the By-Law, and shall so notify the applicant: or
- (b) make a determination that the area on which the work is proposed to be done, or which the proposed work will remove, fill, dredge, build upon, or otherwise alter, is probably significant to one or more of the interests identified in the By-Law, and shall issue an Order of Conditions for the protection of said interest(s).

4.2.3.2 The Order of Conditions shall impose such conditions as are necessary to meet the performance standards set forth in Section 5 of these regulations and such additional conditions as are necessary for the protection of the interests identified in the By-Law and MGL Ch. 131 S 40. The Order shall prohibit any work or any portion thereof that cannot be conditioned to meet such standards. The Order may impose conditions on work outside Protected Resource Areas when, in the opinion of the Commission, (1) such work will have a direct impact on a Protected Resource Area by virtue of changes in the characteristics of storm drainage discharged to that Area from the property, or (2) such work is integrally connected with work to be undertaken within a Protected Resource Area and the only practical way to protect the interests of the By-Law is to regulate the project as a whole.

4.2.3.3 The Order shall be signed by a majority of the Conservation Commission. The Order shall be valid for a period of three years, provided, however, that the Commission may issue an Order for a minimum of one year or a maximum of five years where special circumstances warrant and where those special circumstances are set forth in the Order.

4.2.3.4 Prior to the commencement of any work permitted or required by the Order, the Order shall be recorded in the Middlesex North District Registry of Deeds or Land Court within the chain of title of the affected property. In the case of recorded land, the final order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of registered land, the final order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is to be done. Certification of recording shall be promptly sent to the Commission. If work is undertaken without the applicant first recording the Order, the issuing authority may revoke the Order of Conditions, may issue an Enforcement Order or may itself record the Order of Conditions at the owner's expense.

4.2.4 Appeals

4.2.4.1 Any person aggrieved by the decision of the Commission, whether or not previously a party to the proceeding, may appeal the decision according to the provisions of M.G.L. Ch. 249, s.4.

4.2.5 Extensions

RULES: GENERAL BY-LAW FOR WETLAND PROTECTION

4.2.5.1 The Commission may extend an Order once for up to 3 years. The request for an extension shall be made to the Commission in writing at least 30 days prior to expiration of the Order.

4.2.5.2 The Commission may deny the request for an extension and require the filing of a new Notice of Intent for the remaining work in the following circumstances:

- (a) where no work has begun on the project within a period of 3 years from the date of issuance of the Order, except where such failure is due to unavoidable delays, such as appeals, in the obtaining of other necessary permits;
- (b) where new information, not available at the time the Order was issued, has become available and indicates that the Order is not adequate to protect the interests identified in the By-Law;
- (c) where incomplete work is causing damage to the interests identified in the By-Law;
- (d) where work has been done in violation of the Order or these regulations; or
- (e) where regulations have changed.

4.2.5.3 The Extension Permit shall be recorded in the Land Court or the Registry of Deeds, whichever is appropriate, and certification of recording shall be promptly sent to the Commission. If work is undertaken without the applicant so recording the Extension Permit, the Commission may issue an Enforcement Order or may itself record the Extension Permit at the owner's expense.

4.2.6 Certificates of Compliance

4.2.6.1 Upon written request by the applicant, the Commission shall issue a Certificate of Compliance within 21 days of receipt thereof provided that the activity or portions thereof described in the Notice of Intent and accompanying plans have been completed in compliance with the Order. If a project has been completed in accordance with plans stamped by a registered professional engineer, a written statement by such a professional person certifying substantial compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the Order shall accompany the request for a Certificate of Compliance.

4.2.6.2 Prior to the issuance of a Certificate of Compliance, a site inspection shall be made by the Commission and/or its agent. If requested by the applicant, the site inspection shall be performed in the presence of the applicant or the applicant's agent.

4.2.6.3 If the Commission determines, after a review and inspection, that the work has not been done in compliance with the Order, it may refuse to issue a Certificate of Compliance. Such refusal shall be issued within 21 days of receipt of the request, shall be in writing, and shall specify the reasons for denial.

4.2.6.4 If the final Order contains conditions which continue past the completion of the work, such as maintenance or monitoring, the Certificate of Compliance shall specify which, if any, of

RULES: GENERAL BY-LAW FOR WETLAND PROTECTION

such conditions shall continue. The Certificate shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Order.

4.2.6.5 The Certificate of Compliance shall be recorded in the Land Court or Registry of Deeds, whichever is appropriate. Certification of recording shall be promptly sent to the Commission. Upon failure of the applicant to so record, the Commission may do so at the applicant's expense.

4.3 Abbreviated Notice of Resource Area Delineation

4.3.1 Any person requesting approval of a resource area delineation shall submit to the Commission an Abbreviated Notice of Resource Area Delineation consisting of application materials required for an Abbreviated Notice of Resource Area Delineation under M.G.L. Ch. 131, s. 40 and 310 CMR 10.00 and containing such additional materials as the Commission may require to fully describe the resource areas on site and within 100 feet of the subject property. Each such notice shall be accompanied by a filing fee to be determined in accordance with a fee schedule established by the Commission.

4.3.2 A public hearing shall be held by the Commission within 21 days of the receipt of said Notice. Notice of the time and place of said hearing shall be given by the Commission at the expense of the applicant not less than 5 days prior to such hearing by publication in a newspaper of general circulation in Tyngsborough. The applicant shall be responsible to notify all abutters by certified mail.

4.3.3 When considering an Abbreviated Notice of Resource Area Delineation during adverse weather conditions, it shall be left to the discretion of the Conservation Director as to whether field conditions are conducive to an accurate verification of the resource area delineation.

4.3.4 Within 21 days of closing the hearing, said determination shall be signed by a majority of the Commission, and copies thereof shall be sent by the Commission to the person making the request and to the owner. Said determination shall be valid for 3 years from the date of issuance.

4.3.5 The decision of the Commission may be appealed according to the provisions of M.G.L. Ch. 249, s. 4.

SECTION 5.0 PERFORMANCE STANDARDS

5.1 Incorporation of State Standards

5.1.1 Section 2.3 of the By-Law reads, "The Conservation Commission shall not impose additional or more stringent conditions as a result of any hearing conducted by it pursuant to M.G.L. Ch. 131, s. 40, than it has imposed pursuant to the provisions of this By-Law..." Implicit in this statement is that applicants seeking approval under the By-Law must at least meet all applicable state Wetland Protection Act standards. The standards of 310

RULES: GENERAL BY-LAW FOR WETLAND PROTECTION

CMR 10.53 through 10.57 and 10.60 are therefore herein incorporated by reference. The Commission finds that protection of the interests identified in the By-Law requires that applicants also meet the following additional standards. Failure to meet these standards will result in the Commission's denial of an application.

5.2.1 Stormwater Management

5.2.1 Any proposed work in a Protected Resource Area and any proposed work that involves a new storm drain system or connection to an existing storm drain system that discharges to a Protected Resource Area, shall not result in an increase in the peak rate of surface runoff during either a 2-year, 10-year or 100-year storm event to areas beyond the boundaries of the property on which the activity is to be conducted. All filings involving a new storm drain system or connection to an existing storm drain system shall provide the Commission with a detailed stormwater pollution prevention plan for during construction, as well as, for long-term maintenance of the stormwater system. This plan shall specify detailed construction methods for erosion control, identify responsible parties and shall include a signed affidavit that all conditions of the pollution prevention plan shall be met. The discharge of any substances in to the storm drain system, other than stormwater, is strictly prohibited.

5.3 Structures in Floodplain

5.3.1 No building of any kind, or impervious surfaces or any other facility for the temporary or permanent storage of automobiles, trucks, or other material shall be located below the 100-year flood level without a valid Order of Conditions from the Conservation Commission.

5.4 Wildlife Habitat Impact and Mitigation

5.4.1 On any application for the approval of a project involving the disturbance of more than 20,000 square feet within a Protected Resource Area, the Commission may require (a) an analysis, by a competent wildlife biologist, of (1) the habitat value of the parcel of land to be disturbed and of the adjacent area, and (2) the impact of the proposed development on wildlife populations and habitat value, and (b) proposed measures to be taken during construction and during operation to mitigate these impacts.

5.4.1.1 An evaluation by the applicant of whether a proposed project will have an adverse effect on wildlife habitat beyond the permissible thresholds shall be performed by an individual with at least a masters degree in wildlife biologist or ecological science from an accredited college or university, or other competent professional with at least two years experience in wildlife habitat evaluation.

5.4.2 Where project size warrants, the Commission may require the submission of the results of a quantitative habitat analysis, such as the Habitat Evaluation Procedures (HEP) developed by the U.S. Fish and Wildlife Service. For projects that may disturb less than 20,000 square feet, the Commission may require such an analysis on a case-by-case basis after an inspection and review of the property and project. The Commission may impose whatever conditions it deems necessary to limit impacts on wildlife, regardless of project size.

RULES: GENERAL BY-LAW FOR WETLAND PROTECTION

5.5 Buffer Zone:

5.5.1 New Construction

5.5.1.1 No setbacks for structures necessary for upland access where reasonable alternative access is unavailable, for wetland dependent structures such as stormdrain outfalls, weirs, and the like, and for underground utilities.

5.5.1.2 Within 30 feet of a resource area, the Commission does not allow any disturbance of the land. Minor pruning or cutting of limbs, hand dug tree planting, and hand dug fencing is allowed with approval of the Conservation Director's Determination.

5.5.1.3 Within 50 feet of a resource area, the Commission does not allow building of new structures, retaining walls, or impervious surfaces.

5.5.2 Existing Structures

5.5.2.1 Properties in existing non-compliance with the above will not be permitted to increase their degree of non-conformance.

5.5.2.2 Existing disturbance or reconstruction within 30 feet of a resource area shall be reviewed on a case by case basis.

5.5.2.3 Additions or reconstruction of existing structures within 50 feet of a resource area shall be reviewed on a case by case basis.

SECTION 6.0 CHANGES IN SUBMITTED PLANS

6.1 If, at any time after a Determination of Applicability or Order of Conditions has been issued, there is a change in the proposed activity, the person on whose behalf the work is being done, in the case of a Determination, or the applicant, in the case of an Order, must notify the Commission, in writing, of the proposed changes. No work associated with these changes shall be done on the subject area until the Commission has reviewed the changes and issued its decision.

6.1.1 The Commission shall review these changes and determine one of the following:

6.1.1.1 the changes represent a substantial departure from the original proposal and that the potential impacts of the new proposal on the interests identified in the By-Law are sufficiently different from those of the original proposal as to require the filing of a new Request for Determination or Notice of Intent;

6.1.1.2 the changes involve a substantial departure from the original proposal in only one or two limited respects, as determined by the Commission, and that the Commission will consider amending the original Determination or Order following submission of information on the proposed changes and their potential impacts on the interests identified in the By-Law and

RULES: GENERAL BY-LAW FOR WETLAND PROTECTION

following a public meeting or hearing and notice as required in Sections 4.1 and 4.2 above;
or

- 6.1.1.3 the changes represent an insignificant change in the original proposal and will cause no significant difference in the impact of the activity on the interests identified in the By-Law, in which case the person proposing these changes may proceed in conformance with them.
- 6.1.2 The person making this request shall be notified by the Commission of its decision within 21 days of receipt of his or her request.

SECTION 7.0 ENFORCEMENT

- 7.1 Any person who violates any provision of the By-Law, the regulations promulgated under it, or any conditions of a valid Order of Conditions shall be punished by a fine of not more than \$300. Each day or portion thereof of continuing violation shall constitute a separate offense. The By-Law, these regulations, and all Orders of Conditions may be enforced by the Commission, the Director, and its designees.
- 7.2 The members and Director of the Commission may enter upon privately owned land for the purpose of performing their duties under the By-Law and these rules and regulations.
- 7.3 When the Commission determines that an activity is in violation of the By-Law, these regulations, or a final Order of Conditions, the Commission may issue an Enforcement Order. Violations include, but are not limited to:
 - 7.3.1 failure to comply with a final Order, such as failure to observe a particular condition or time period specified in the Order;
 - 7.3.2 failure to complete work described in a final Order, when such failure causes damage to the interests identified in the By-Law; or
 - 7.3.3 failure to obtain a valid Order of Conditions or Extension Permit prior to conducting an activity subject to regulation under the By-Law.
- 7.3.4 An Enforcement Order issued by the Commission shall be signed by a majority of the Commission. In a situation requiring immediate action, an Enforcement Order may be signed by a single member or agent of the Commission, provided said Order is ratified by a majority of the members at the next scheduled meeting of the Commission.

SECTION 8.0 SECURITY

- 8.1 The Commission may require, as a permit condition, that the performance and observance of the Order of Conditions be secured by one or both of the following methods:
 - 8.1.1 By a bond or deposit of money or negotiable securities in an amount and form determined by the Commission to be sufficient to secure the completion of all conservation measures specified in their Order of Conditions: and, the Commission may require that the applicant specify the time within which such construction shall be completed.

RULES: GENERAL BY-LAW FOR WETLAND PROTECTION

- 8.1.1.1 The penal sum of any such bond shall bear a direct and reasonable relationship to the expected costs, including the effects of inflation, necessary to complete the sub-work. Such amount or amounts shall be from time to time reduced as is, in the determination of the Commission, necessary to reflect the actual expected costs of the work remaining to be completed.
- 8.1.2 By a covenant, executed and duly recorded by the owner of record, running with the land whereby such conservation measures, as are stated in the Order of Conditions, shall be provided before any lot may be built upon or conveyed.
- 8.2 The deposit of monies, negotiable securities, bond or covenant shall, in the case of the bond, be given to the Town Treasurer, and, in the case of a covenant, be recorded in the Registry of Deeds or Land Court, as the case may be, within 14 days of the granting of the Order of Conditions.

SECTION 9.0 WAIVER OF REGULATIONS

- 9.1 Strict compliance with these regulations may be waived when, in the judgement of the Commission, such action would serve a substantial public interest or when strict compliance would result in the following, but not limited to, severe economic, physical, legal, contextual hardship far greater in magnitude than the public interest to be served. In the latter case, the Commission may require that compensatory or mitigating measures be taken, even at an offsite location, to protect the public interest in the Protected Resource Area to be removed, filled, dredged, built upon, or altered.

SECTION 10.0 SEVERABILITY

- 10.1 If any provision of any part of these rules and regulations or the application thereof is held to be invalid, such invalidity shall not affect any other provision of these rules and regulations.

SECTION 11.0 EFFECTIVE DATE

- 11.0 These rules and regulations shall take effect upon adoption and shall apply to all applications filed on or after that date and any procedures or work conducted pursuant to such filings. They shall not apply to any application for which was filed prior to said effective date.

(Adopted by vote of the Commission on July 26, 2005 unless otherwise noted)