

CHAPTER 17. GENERAL WETLANDS BY-LAW *(Added 1981)*

Section 1: Application

The purpose of this By-Law is to protect the wetlands of the Town of Sherborn by controlling activities deemed to have a significant effect upon wetland values, including, but not limited to, the following: public or private water supply, ground water, flood control, erosion control, storm damage, water pollution, wildlife (collectively, the “interests protected by this By-Law”).

No person shall remove, fill, dredge, alter or build upon or within one hundred feet of, any bank, fresh water wetland, beach, marsh, meadow, bog, swamp, or on or within one hundred feet of lands bordering on any estuary, creek, river, stream, pond or lake, or any land under said waters or on or within one hundred feet of any land subject to storm flowage, flooding or inundation, or within one hundred feet of the 100-year storm line, other than 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, without filing written application for a permit to remove, fill, dredge, alter or build upon, and receiving and complying with a permit issued pursuant to this By-Law. The application shall be accompanied by plans and analyses required by the Sherborn Conservation Commission.

The provisions of this section shall not apply to maintenance of drainage and flooding systems of cranberry bogs; to work performed for normal maintenance or improvement of land in agricultural use; and to qualifying forest management practices.

Such application may be identical in form to a notice of intent filed pursuant to Chapter 131, Section 40 of the General Laws, shall be sent by certified mail to the Sherborn Conservation Commission (“the Commission”), shall be accompanied by a filing fee in an amount established by regulation payable to the Town of Sherborn and must be filed concurrently or after applications for all other permits, variances and approvals required by the Zoning By-Law, the Subdivision Control Law or any other by-law or regulation. Copies of the application shall be sent at the same time, by certified mail, to the Board of Selectmen, the Planning Board and the Board of Health. Upon written request of any person, the Commission shall, within twenty-one days, make a written determination as to whether this By-Law is applicable to any land or work thereon. 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.

Section 2. Hearing

The Commission shall hold a public hearing on the application within thirty 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 days prior to the hearing, by publication in a newspaper of general circulation in Sherborn and by mailing a notice to the applicant,

the Board of Health, the Board of Selectmen, the Planning Board, all abutters, and to such other persons as the Commission may, by regulation, determine.

Section 2.1 PERMIT AND CONDITIONS

If, after the public hearing, the Commission determines that the area which is the subject of the application is significant to the interests protected by this By-Law, the Commission shall, withing twenty-one days of such hearing, issue or deny a permit for the work requested. If it issues a permit after making such determination, the Commission shall impose such conditions as it determines are necessary for protection of those interests and all work shall be done in accordance with those conditions. The conditions may include a condition that certain land or portions thereof not be built upon or altered, filled or dredged, that streams not be diverted, dammed or otherwise disturbed. The applicant may file a new application on any project, provided that the new application is accompanied by plans and analyses which reflect significant differences from the original filing. If the Commission determines that the area which is the subject of the application is not significant to the interests protected by the By-Law, or that the proposed activity does not require the imposition of conditions, it shall issue a permit without conditions within twenty-one days of the public hearing. Permits shall expire one year from the date of issuance, unless renewed prior to expiration, and all work shall be completed prior to expiration.

Section 2.2 RELATIONSHIP TO CHAPTER 131, Section 40

The Commission shall not impose additional or more stringent conditions pursuant to Chapter 131, Section 40 of the General Laws than it imposes pursuant to the By-Law, nor shall it require a notice of intention pursuant to Section 40 to provide materials or data in addition to those required pursuant to this By-Law.

Section 3. Emergency Projects

This By-Law shall not apply to any emergency project as defined in Chapter 131, Section 40 of the General Laws.

Section 4. Pre-acquisition Violation

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this By-Law or in violation of any permit issued pursuant to this By-Law shall 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, shall be brought against such person unless commenced within three years following the date of acquisition of the real estate by such person.

Section 5. Regulations

After due notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purposes of the By-Law. 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 By-Law.

Section 6. Burden of Proof

The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not harm the interests protected by this By-Law. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by this By-Law shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions or, in the Commission's discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence.

Section 7. Definitions

The following definitions shall apply in the interpretation and implementation of this By-Law.

Section 7.1 The term "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 by-laws, administrative agencies, public or quasi-public corporations or bodies, the Town of Sherborn, and any other legal entity, its legal representatives, agents or assigns.

Section 7.2 The term "applicant" shall mean any person requesting a permit under this By-Law.

Section 7.3 The term "alter" shall include, but without limitation, the following actions when undertaken in areas subject to this By-Law.

- a) Removal, excavation or dredging of soil, sand, gravel or aggregate material of any kind;
- b) Changing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, and 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) Driving of piles, erection of buildings or structures of any kind;
- f) Placing of obstructions whether or not they interfere with the flow of water;
- g) Changing of water temperature, biochemical oxygen demand or other physical or chemical characteristics of the water.

Section 7.4 The term "banks" shall mean that part of land adjoining any body of water which confines the water.

Section 7.5 The term “freshwater wetlands” shall mean wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrata for a plant community for at least five months of the year; emergent and submergent plant communities in inland water; that portion of any bank which touches any inland water.

The term “swamps” shall mean areas where ground water is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily including all of the following plants or groups of plants; alders (*Alnus*), ashes (*Fraxinus*), azaleas (*Rhododendron canadense* and *R. viscosum*), black alder (*Ilex verticillata*), black spruce (*Picea mariana*), button-bush (*Cephalanthus occidentalis*), American or white elm (*Ulmus Americana*), white Hellebore (*Veratrum viride*), hemlock (*Tsuga canadensis*), highbush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), cowslip (*Caltha palustris*), poison sumac (*Toxicodendron vernix*), red maple (*Acer rubrum*), skunk cabbage (*Symplocarpus foetidus*), sphagnum mosses (*Sphagnum*), spicebush (*Lindera benzoin*), black gum tupelo (*Nyssa sylvatica*), sweet pepperbush (*Clethra alnifolia*), white cedar (*Chamaecyparis thyoides*), willow (*Salicaceae*).

The term “wet meadows” shall mean areas where ground water is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all of the following plants or groups of plants: blue flag (*Iris*), vervain (*Verbena*), thoroughwort (*Eupatorium*), dock (*Rumex*), false loose-strife (*Ludwigia*), hydrophilic grasses (*Gramineae*), loosestrife (*Lythrum*), marsh fern (*Dryopteris thelypteris*), rushes (*Juncaceae*), sedges (*Cyperaceae*), sensitive fern (*Onoclea sensibilis*), smartweed (*Polygonum*).

The term “bogs” shall mean areas where standing or slowly running water is near or at the surface during a normal growing season and where a vegetational community has a significant portion of the ground or water surface covered with sphagnum moss (*Sphagnum*) and where the vegetational community is made up of a significant portion of one or more of, but not limited to nor necessarily including all of the following plants or groups of plants: aster (*Aster nemoralis*), azaleas (*Rhododendron canadense* and *R. viscosum*), black spruce (*Picea Mariana*), bog cotton (*Eriophorum*), cranberry (*Vaccinium macrocarpon*), high-bush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), laurels (*Kalmia angustifolia* and *K. polifolia*), leatherleaf (*Chamaedaphne calculata*), orchids (*Arethusa*, *Calopogon*, *Pogonia*), pitcher plants (*Sarracenia purpurea*), sedges (*Cyperaceae*), sundews (*Dryseraceae*), sweet gale (*Myrica gale*), white cedar (*Chamaecyparis thyoides*).

The term “marshes” shall mean areas where a vegetational community exists in standing or running water during the growing season and where a significant part of the

vegetational community is composed of, but not limited to nor necessarily includes all of the following plants or groups of plants: arums (Araceae), bladder worts (Utricularia), bur reeds (Sparganiaceae), button bush (Cephalanthus occidentalis), cattails (Typha), duck weeds (Lemnaceae), eelgrass (Vallisneria), frog bits (Hydrocharitaceae), horsetails (Equisetaceae), hydrophilic grasses (Gramineae), leatherleaf (Chamaedaphne calyculata), pickerel weeds (Polygonum), sweet gale (Myrica gale), water milfoil (Haloragaceae), water lilies (Nymphaeaceae), water starworts (Callitrichaceae), water willow (Decodon verticillatus).

Section 7.6 PLANS AND ANALYSES

The term “plans and analyses” shall mean such material, studies, and information as the Commission determines are necessary to describe the proposed activity and its effects on the interests protected by this By-Law. Plans and analyses may include without limitation:

- a) Engineering drawings signed by a registered engineer or land surveyor;
- b) Geological survey maps of the area in question;
- c) Information regarding soil characteristics in the area;
- d) Information regarding flood characteristics and maximum water table levels in the area;
- e) Erosion and sedimentation prevention plans for the proposed activity.

Section 7.7 AGRICULTURAL PRACTICES

- a) The term “land in agricultural use” shall mean qualifying wet land within a farm which is qualified or eligible to be qualified under the Farmland Assessment Act, Mass. General Laws, Chapter 61A, Section 1-5.
- b) The term “qualifying wetland” shall mean only inland freshwater areas which are seasonally flooded basins or flats or inland fresh meadows.
- c) The term “normal maintenance or improvement” of land in agricultural use shall mean only:
 - a. Tilling practices customarily employed in the raising of crops;
 - b. Pasturing of animals, including such fences and protective structures as may be required;
 - c. Use of fertilizers, pesticides, herbicides, and similar materials subject to state and federal regulations covering their use;
 - d. Constructing, grading, or restoring of field ditches, sub-surface drains, grass waterways, culverts, access roads, and similar practices to improve drainage, prevent erosion, provide more effective use of rainfall, improve equipment operation and efficiency, in order to improve conditions for the growing of crops.
- d) Other improvements of land in agricultural use may also include more extensive practices as may be necessary for compliance under Section 208 of The Clean Water Act, 33 U.S.C. 466 et seq. such as the building of ponds, dams, structures

for water control; water and sediment basins, and related activities but only where a plan for such activity approved by the Conservation District of the Soil Conservation Service is furnished to the Sherborn Conservation Commission prior to the commencement of work. All such activity shall subsequently be carried out in accordance with said plan. In the event that the work is not carried out in accordance with the required plan, the Conservation Commission may place a cease and desist order on said work and have recourse to such measures as if the plan were an order of conditions.

Section 7.8 FOREST MANAGEMENT PRACTICES

The term “qualifying forest management practices” shall mean those forest management practices, including the harvesting of forest products, carried out in accordance with the Forest Cutting Practices Act (Mass. General Laws, Chapter 132, Section 40-46) and the Slash Law (Mass. General Laws, Chapter 48, Section 16).

If a cutting plan under Chapter 132 is required, a copy of said plan, approved by the State Forester, shall be forwarded to the Sherborn Conservation Commission prior to the commencement of work.

In the event that such forest management work is carried out not in accordance with the above Acts and the relevant plan, and in a manner determined by the Conservation Commission to cause harm to wetlands, the Commission may place a cease and desist order on such work and have recourse to such measures as if the above Acts and plans were an order of conditions.

Section 7.9 The Commission may adopt additional definitions not inconsistent with this Section 7 in its regulations promulgated pursuant to Section 5 of this By-Law.

Section 8. Security

The Commission may require, as a permit condition, that the performance and observance of other conditions be secured by one or both of the following methods:

- a) By bond or deposit of money or negotiable securities in an amount determined by the Commission to be sufficient and payable to the Town of Sherborn upon default;
- b) By a conservation restriction, easement or other covenant running with the land, executed and properly recorded (or registered, in the case of registered land).

Section 9. Enforcement

Any person who violates any provision of this By-Law or any condition of a permit issued pursuant to it shall be punished by a fine of not more than \$200.00. Each day or portion thereof during which a violation continues shall constitute a separate offense; if

more than one, each condition violated shall constitute a separate offense. This By-Law may be enforced by a Town police officer or other officer having police powers pursuant to Mass. General Laws, Chapter 40, Section 21D. Upon request by the Commission, the Board of Selectmen and the Town Counsel shall take such legal action as may be necessary to enforce this By-Law and permits issued pursuant to it.