

## **Article 24. Amend Wetlands Protection Bylaw (Conservation Commission)**

To see if the Town will vote to amend Dover General Bylaws Chapter 181, Dover Wetlands Protection, the complete text of which is on file in the Offices of the Town Clerk and the Conservation Commission; or take any other action relative thereto.

[deletions in strikethrough, changes in bold]

### **CHAPTER 181**

#### **DOVER WETLANDS PROTECTION**

##### **§ 181-1. Purpose. [Amended ATM 5-12-2014 by Art. 12]**

The purpose of this chapter is to preserve and protect the environmental quality of the wetlands, adjoining land areas and related resources of the Town of Dover by regulating activities deemed to have a significant effect upon them, including, but not limited to, the following: public or private water supply; groundwater, flood control, erosion and sedimentation control; storm damage prevention; plant life, including timber in all stages of growth; water quality; fish, fisheries, shellfish, wildlife and wildlife habitat; recreation; agriculture and aquaculture (collectively, the interests protected by this chapter).

##### **§ 181-2. Permit required for work. [Amended ATM 5-12-2014 by Art. 12]**

No person shall remove, fill, dredge, alter or build upon or within ~~100~~ 150 feet of any freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, beach, bordering vegetated wetland, dune, lake, river, pond, intermittent stream, isolated vegetated wetland, estuary, upon or within any land under said water, upon any land subject to flooding or inundation by groundwater, surface water or storm flowage or within ~~100~~ 150 feet of the one-hundred-year storm line without first applying for, receiving and complying with a Permit issued by the Conservation Commission. No person shall remove, fill, dredge, alter or build upon or within 200 feet of any river or perennial stream, without first applying for, receiving and complying with a Permit issued by the Conservation Commission.

##### **§ 181-3. Exceptions to Permit requirements. [Amended ATM 5-12-2014 by Art. 12]**

- a. The Permit and Application required by this chapter shall not be required for maintaining, repairing or replacing an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, sanitary sewer, storm drainage, telephone, telegraph or other telecommunication services, provided that the structure or facility is not substantially changed or enlarged, provided that written notice has been given to the Commission at least 21 and not more than 60 days prior to commencement of work and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.<sup>1</sup>

B. The Permit and Application required by this chapter shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by any agency of the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement, provided that the Commission certifies the work as an emergency project, and 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. A Permit Application shall be filed with the Commission no later than 30 days from the date that emergency project work commences or 60 days in the case of an Immediate Response Action approved by DEP to address an oil/hazardous material release. A Permit Application shall not be required for emergency projects in response to severe weather emergencies as declared by the Commissioner of the Department of Environmental Protection following a destructive weather event requiring widespread recovery efforts, debris clean-up or roadway or utility repair.

C. The Permit and Application as provided in this chapter shall not apply to work performed for normal maintenance or improvement of Land in Agricultural Use.

**§ 181-4. Applications for Permits. [Amended ATM 5-12-2014 by Art. 12]**

A. Written Application for a Permit (hereinafter "Application") shall be filed with the Commission to perform work regulated by this chapter in or on a resource area or areas protected by this chapter. The Application shall include plans that describe the proposed activities and their effects on the environment of the resource areas. No work shall commence without receiving and complying with the Permit issued pursuant to this chapter.

B. Contents of Application and plans shall be in accordance with the Commission's Rules and Regulations.

C. Such Application may, at the discretion of the Commission, be identical in form to a Notice of Intent filed pursuant to MGL c. 131, § 40. The completed Application shall be delivered to the Conservation Commission in accordance with the rules and regulations of the Commission. The Application shall be accompanied by a filing fee and a legal notice fee as specified in the Commission's Rules and Regulations. No filing fee is required when the Town of Dover files an Application for a Permit. Notification of the filing shall be made to other Town Boards and abutters in the form and manner as specified in the Commission's Rules and Regulations.

**§ 181-5. Request for Determination.**

A. Upon written Request of any person, the Commission shall, within 21 days, make a written Determination (Determination of Applicability) as to whether this chapter is applicable to any specific parcel or parcels of land or to any specific work to be performed thereon. Such a Request for Determination shall contain

data and plans specified by the Commission's Rules and Regulations and shall be accompanied by a filing fee, legal notice fee and the applicant's signed agreement accepting the

responsibility for reasonable consultant's fees, as specified in such Rules and Regulations.

- B. In acting on a Request for Determination the Commission shall reference the data and plans relied upon and upon which the Determination is contingent.
- C. Determinations shall expire 3 years from the date of issuance. **[Amended ATM 5-12-2014 by Art. 12]**

**§ 181-6. Notice and hearings; fees and expenses.**

- A. Any person filing an Application or a Request for Determination with the Commission at the same time shall give written notice thereof, by certified mail or hand delivery, or other generally recognized method that provides proof of mailing to all abutters at their mailing addresses, according to the most recent tax list of the assessors, including owners of land directly opposite on any public or private street or way, across a body of water and abutters to the abutters within 300 feet of the property line which is the subject of the Application or Request, including any in another municipality. The notice shall include a copy of the Application or Request, together with the plans submitted to the Commission, or shall state where copies may be examined and obtained by abutters free of charge. When a person requesting a Determination is other than the record owner of the subject parcel(s), the Determination shall be sent by the Commission to the record owner, as well as the persons making the Request. **[Amended ATM 5-12-2014 by Art. 12]**
- B. The Commission shall hold a public hearing on an Application within 21 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 5 days prior to the hearing, by publication in a newspaper of general circulation in Dover and by mailing a notice to the applicant, the Board of Health, Board of Selectmen, Planning Board, Board of Appeals, Building Inspector and to such other persons as the Commission may, by regulation, determine.
- C. In an appropriate case the Commission may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act, MGL c. 131, § 40, and may combine the public notices thereof.
- D. For reasons announced by the Commission at the hearing, the Commission shall have authority to continue the hearing to a date certain announced at the hearing, either for receipt of additional information offered by the applicant or others or for information required of the applicant, deemed necessary by the Commission in its discretion. In the event the applicant objects to a continuance, the hearing shall be closed and the Commission shall take action on such information as is available.
- E. In addition, the applicant shall pay the reasonable fees and expenses of any consultant deemed necessary by the Commission up to a maximum of \$5,000 in accordance with the Commission's Rules and Regulations. After the close of the hearing on the Application, the Commission shall notify the applicant in writing as to the amount, if any, of the said consultant's fees and expenses. At the discretion

of the Commission, no Permit shall be issued until such fees and expenses have been paid.

**§ 181-7. Permits, Determinations and conditions.**

- A. Within 21 days of the close of the hearing, the Commission shall issue or deny a Permit for the work requested. If it issues a Permit, the Commission shall impose conditions which it deems necessary or desirable to protect the interests which are the subject of this chapter, and all work shall be done in accordance with those conditions.
- B. If, after consideration of an Application, the Commission determines that the area which is the subject of the Application does not have significant interests protected by this chapter the Commission shall inform the applicant within 21 days that the work does not require a Permit. [Amended ATM 5-12-2014 by Art. 12]
- C. Permits and Determinations shall expire 3 years from the date of issuance.
- D. Any Permit may be renewed at the Commission's reasonable discretion for additional three-year periods, provided that a written Request for renewal is received by the Commission at least 45 days prior to expiration of the Permit. A Determination shall not be renewed. [Added ATM 5-12-2014 by Art. 12<sup>2</sup>]
- E. For good cause, including unexpected conditions actually encountered at the parcel which is the subject of the Application, and after public notice and hearing, the Commission may review, revoke or modify a Permit issued under this chapter.
- F. In an appropriate case, the Commission may combine the Permit, the Determination or other action on an Application or Request under this chapter with the Order of Conditions or termination or other action issued under the Wetlands Protection Act.

**§ 181-8. Preacquisition violations.**

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this chapter shall forthwith comply with any order or restore such parcel to its condition prior to any such violation; provided, however, that no civil or criminal action shall be brought against such person unless commenced within 3 years following the date of acquisition of the real estate by such person.

**§ 181-9. Rules and regulations.**

- A. After public notice and public hearing, the Commission may promulgate Rules and Regulations to effectuate the purpose of this chapter, including, but not limited to, regulations concerning filing fees and payment of reasonable consultant fees. Failure by the Commission to promulgate such Rules and Regulations or a legal declaration of invalidity of any such Rules and Regulations by a court of law shall not act to suspend or invalidate the effect of this chapter.
- B. Public notice shall be given at least 3 weeks prior to such hearing by publication in a newspaper of general circulation in Dover and by posting with the Town Clerk.
- C. The Commission's Rules and Regulations may define and expand key terms and

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2. **Editor's Note:** This article also redesignated former Subsections D and E as Subsections E and F, respectively.

provisions contained herein, in any manner not inconsistent with this chapter.

**§ 181-10. Definitions. [Amended ATM 5-12-2014 by Art. 12]**

- A. Definitions shall refer to those found in the Commission's Rules and Regulations.
- B. For terms not defined in the Commission's Rules and Regulations refer to MGL c. 131, § 40, or MA WPA, 310 CMR 10.
- C. Terms not defined in Subsection A or B above shall have their ordinary and usual meaning.

**§ 181-11. Security. [Amended ATM 5-12-2014 by Art. 12]**

As part of a Permit issued under this chapter, in addition to any security required by any other Town or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed pursuant to this chapter be secured wholly or in part by one or more of the methods described below:

- A. By a proper bond or deposit of money or negotiable securities sufficient in the opinion of the Commission to secure performance of the conditions and observance of the safeguards of the Permit.
- B. By 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 the Town of Dover and members of the public, whereby the Permit conditions and safeguards shall be observed and performed before any lot may be conveyed other than by mortgage deed.

**§ 181-12. Enforcement.**

- A. The Commission, its agents, officers and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.
- B. The Commission shall have authority to enforce this chapter and regulations and Permits issued pursuant to this chapter by issuing violation notices and administrative orders and by commencing civil and criminal court actions.
- C. Upon Request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon Request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.
- D. Town of Dover boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement of this chapter.
- E. The Commission may elect to utilize the noncriminal disposition procedure set forth in MGL c. 40, § 21D. Any person who violates any provision of this chapter, regulations promulgated hereunder or Permits issued hereunder shall be punished

by a fine of not more than \$300. Each day or portion thereof during which a

violation continues shall constitute a separate offense, and each provision of the chapter, regulations or Permit violated shall constitute a separate offense.

**§ 181-13. Burden of proof. [Amended ATM 5-12-2014 by Art. 12]**

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 chapter. Failure to provide adequate evidence to the Commission which would support a Determination that the proposed work will not harm the interests protected by this chapter shall be sufficient cause for the Commission either to deny a Permit or to grant a Permit with conditions.

**§ 181-14. Statutory authority.**

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetland Protection Act, MGL c. 131, § 40, and regulations thereunder.

**§ 181-15. Severability.**

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof, nor shall it invalidate any Order of Conditions or Permit which previously has been issued.