

CHAPTER 37 -- WETLANDS PROTECTION

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History: May, 1997 ATM adopted Article 11, a rewrite of the General Bylaws including Chapter 37 – Wetlands Protection. Approved by Attorney General on September 10, 1997.

October 1997 STM adopted Article 11 which amended the Wetlands Protection Bylaw by adding a new paragraph (c) to “Exceptions”. Approved by Attorney General January 30, 1998.

The May 8, 2000 ATM adopted Article 24 which amended §37-013(e) from one year to three years. Approved by Attorney General September 5, 2000.

The May 12, 2003 ATM adopted Article 12 which added new subsection (d) to Section 37021 - Enforcement and Remedies. Approved by Attorney General August 26, 2003.

The May 10, 2004 ATM adopted Article 15 which added new wording to §37001 - Purpose. Added new paragraphs to §37003 - Definition of terms. Made changes to §37005 - Jurisdiction. Made changes and included a Conservation Variance Provision in §37007 - Exceptions. Removed wording from §37011 - Notice and Hearings. Made changes and added new paragraphs in §37013. Added new wording to §37021 Subsection (a) - Enforcement and Remedies. Approved by Attorney General August 19, 2004.

§ 37001. Purpose

The purpose of this chapter is to protect the wetlands, related water resources, and adjoining land areas in the Town by controlling activities deemed by the conservation commission ("the commission") to have an impact or cumulative effect upon wetland values, including but not limited to the following: public water supply, private water supply, groundwater and groundwater quality, water quality in the numerous ponds of the Town, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, wildlife and wildlife habitat, fisheries, and shellfish, aquaculture, marshland and eelgrass beds, marine and shoreline ecology, rare and

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endangered species habitat including plant species, and passive recreational enjoyment of wetlands and adjoining uplands (collectively, the "interests protected by this Chapter").

§ 37003. Definition of terms

The following words, for the purpose of this chapter of these bylaws shall, unless another meaning is clearly apparent for the way in which the word is used, have the following meanings:

- (1) "person" means 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 bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents or assigns.
- (2) "alter" means, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this chapter:
 - (A) Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
 - (B) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
 - (C) Drainage or other disturbance of water level or water table;
 - (D) Dumping, discharging or filling with any material;
 - (E) Placing of fill, or removal of material
 - (F) Driving of piles, erection of buildings, or structures of any kind;
 - (G) Placing of obstructions or objects in water;
 - (H) Destruction of plant life including cutting of trees;
 - (I) Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
 - (J) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.
- (3) "Adjacent Upland Resource" area means the land within 100 feet of any freshwater wetland, coastal wetland, marsh, wet meadow, bog, vernal pool or swamp, bank, beach, dune or flat, any lake, river, pond, stream, estuary, watercourse or the ocean, land subject to flooding or inundation by groundwater, surface water, tidal action or land subject to coastal storm flowage as articulated

in section 37005 of the bylaw. It shall also mean the land within 200 feet of a perennial stream or river.

- (4) "Fisheries" and/or "Marine fisheries" means, (1) the fish and shellfish resource itself, including all fish and shellfish found in fresh, salt or brackish waters and any organisms including plants that make up part of the food chain of such animals regardless of their commercial value and/or (2) the recreational or commercial catching of fish or shellfish from the ocean or from fresh water bodies.
- (5) "Passive Recreation" means activities, which have no significant adverse impact on the natural environment, and are consistent with the rules and regulations promulgated by the Commission to achieve the purposes of this Chapter.
- (6) "No Disturb Zone" means that part of an Adjacent Upland Resource area that extends 50 feet landward from an abutting resource area and which is designated by the Commission to be an area where no substantial activity, (other than maintenance of an already existing structure) which will result in the building within or upon, filling, removing, or altering of land, shall be permitted by the Commission, except for that which is allowed under a Conservation Variance.

§ 37005. Jurisdiction

Except as permitted by the commission or as provided in this chapter, no person shall remove, fill, dredge, build upon, or alter the following resource areas:

- (a) upon or within 100 feet of any freshwater wetland, coastal wetland, marsh, wet meadow, vernal pool, bog or swamp;
- (b) upon or within 100 feet of any bank, beach, dune or flat;
- (c) any lake, river, pond, stream, estuary, watercourse, or the ocean;
- (d) within 100 feet of any lake, pond, stream, estuary, watercourse, or the ocean;
- (e) within 200 feet of any river;
- (f) any land under said waters;
- (g) upon or within 100 feet of any land subject to flooding or inundation by groundwater, surface water, or tidal action;
- (h) upon or within 100 feet of any land subject to coastal storm flowage.
- (i) within the boundaries of any Area of Critical Environmental Concern.

§ 37007. Exceptions

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(a) Public structures or facilities --

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 which is used in the service of the public to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, public transportation facility, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the commission prior to the commencement of work, that the structure or facility will not be, in the opinion of the commission, substantially changed or enlarged.

(b) Conservation Variance Provision -

In rare and unusual circumstances the Commission, at its discretion, may grant a Conservation Variance from the requirements of the 50 foot no-disturb zone. Such a Conservation Variance shall be granted only in the following cases:

- (1) where maximum feasible compliance is achieved, or
- (2) where there are clear and compelling reasons of public safety and welfare, or
- (3) where the proposed project will enhance the environmental values protected by the Bylaw, or
- (4) upon a clear and convincing showing of evidence by the applicant that the proposed work will not adversely affect the environmental values protected by the Bylaw.

(c) Emergency projects --

- (1) The permit and application required by this chapter shall not apply to 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 adequate notice, oral or written, has been given to the commission prior to the commencement of work or, in any event, provided that written notice is given to the commission within 24 hours after commencement, provided that a majority of 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 purpose necessary to abate the emergency.
- (2) Within 21 days of commencement of an emergency project, a permit application shall be filed with the commission for review as provided in this chapter.

(d) Eastward Ho! Country Club--

Projects necessary for the protection of the property of Eastward Ho! Country Club, Inc., said property being bounded easterly by the private properties located

on Rush Drive; southeasterly by Fox Hill Road and the private properties located on Fox Hill Road; southwesterly by Route 28 (Orleans Road); and northerly by property of the Town of Chatham and Pleasant Bay, more specifically shown on the Assessor's records as Parcel 10M-2-1, shall be exempt from the following portion of Section 2.05(3) of the Town of Chatham Wetlands Protection Regulations:

“(a) no new bulkhead, revetment, seawall, groin or other coastal engineering structure shall be permitted on or within 100 feet of a coastal bank, except that such a coastal engineering structure shall be permitted when required to prevent storm damage to buildings constructed prior to August 10, 1978 or constructed pursuant to a Notice of Intent (issued under MGL 131, section 40) filed prior to August 10, 1978, including reconstruction of such buildings subsequent to the effective date of these regulations,…”

Such projects shall be subject to the requirements set forth in Section 2.05 (3) (a)(i), (ii), (iii) and (iv). (This section (c) added October, 1997 STM. Approved by AG January 30, 1998.)

§ 37009. Application for permits, request for determination

- (a)
 - (1) Written application shall be filed with the commission to perform activities regulated by this chapter affecting resource areas protected by this chapter.
 - (2) The application shall include such information and plans as are deemed necessary by the commission to describe proposed activities and their effects on the environment.
 - (3) No activities shall commence without receiving and complying with a permit issued pursuant to this chapter.
- (b) The commission in an appropriate case may accept as the application and plans under this chapter the *Notice of Intent* and plans filed under the Wetlands Protection Act [MGL. Chapter 131, Section 40].
- (c)
 - (1) Any person desiring to know whether or not proposed activity or an area is subject to this chapter may in writing request a determination from the commission.
 - (2) Such request for a determination shall contain data and plans specified pursuant to this chapter.
- (d) At the time of application or request the applicant shall pay a filing fee specified in the regulations of the commission promulgated pursuant to this chapter.

§ 37011. Notice and hearings

- (a)
 - (1) 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, to all abutters according to the most recent records of the assessors, including those across a traveled way, and to all other persons as the commission shall in writing require.
 - (2) The notice shall enclose a copy of the application or request with plans, or shall state where copies may be examined and obtained by abutters.
 - (3) When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the commission to the owner as well as to the person making the request, and the applicant shall supply the commission with the name and current address of the owner.
- (b) The commission shall conduct a public hearing on any application or *Request for Determination*, with written notice published at the expense of the applicant, five working days prior to the hearing, in a newspaper of general circulation in the Town.
- (c) The commission shall commence the public hearing within 21 days from receipt of a completed application or *Request for Determination*.
- (d) The commission shall issue its permit or other action, or determination, in writing within 21 days of the close of the public hearing thereon.
- (e) The commission in an appropriate case may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act, Massachusetts General Laws (M.G.L.), Chapter 131, Section 40.
- (f)
 - (1) The commission shall have the authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the commission in its discretion, or comments and recommendations of other local or state boards and officials.
 - (2) 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.

§ 37013. Permits, conditions and determinations

- (a) If the commission after a public hearing determines that the activities which are the subject of the application are likely to affect the interests protected by this chapter, the commission, within 21 days of the close of the hearing shall issue or deny a permit for the activities requested.

- (b) If it issues a permit, the commission shall impose conditions which the commission deems necessary or desirable to protect those interests, and all activities shall be done in accordance with those conditions.
- (c) The commission is empowered to deny a permit for failure to meet the requirements of this chapter; for failure to submit necessary information and plans requested by the commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the commission; for failure to avoid or prevent unacceptable or cumulative effects upon wetland values protected by this chapter; and where no conditions are adequate to protect those values.
- (d) If the activities are not deemed to affect the interests protected by this chapter, the commission shall so inform the applicant that the activities do not require a permit.
- (e)
 - (1) Permits, excepting those for maintenance dredging, shall expire three years from the date of issuance.
 - (2) Any such permit may be renewed annually for an additional year, up to a maximum of three years upon request for an extension received in writing by the Commission prior to expiration.
- (f) Permits for maintenance dredging shall expire 10 years from issuance. The applicant shall provide written notice to the Commission at least 30 days prior to each commencement of dredging. Such notice shall contain the location of the project, the permit number, the proposed work start date and the name of the applicant.
- (g) For good cause the commission may revoke or modify a permit issued under this chapter after public notice and public hearing, and notice to the holder of the permit.
- (h) The commission in an appropriate case may combine the permit or other action on an application issued under this chapter with the *Order of Conditions* issued under the Wetlands Protection Act, M.G.L., Chapter 131, Section 40.
- (i) to prevent potential wetland loss or damage, the commission shall require applicants to:
 - (1) avoid wetlands loss or damage wherever feasible;
 - (2) design the project so as to minimize potential impact on the wetlands using best management practices (BMPs);
 - (3) provide adequate mitigation.

§ 37015. Regulations

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- (a) (1) After public notice and public hearing the commission shall promulgate rules and regulations to effectuate the purposes of this chapter.
- (2) 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 chapter.
- (b) At a minimum these regulations shall define key terms in this chapter not inconsistent with this chapter.

§ 37017. Security

- (a) As a 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 hereunder be secured wholly or in part by one or more of the methods described below:
 - (1) By a proper bond or deposit of money or negotiable securities in an amount sufficient in the opinion of the commission and payable to the Town of Chatham.
 - (2) By a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded (or registered in the case of registered land) by the owner of record, running with the land to the benefit of this municipality and members of the public, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

§ 37019. Burden of proof

- (a) (1) The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the activities proposed in the application will not harm the interests protected by this chapter.
- (2) Failure to provide adequate evidence to the commission supporting a determination that the proposed activities will not harm the interests protected by this chapter shall be sufficient cause for the commission to deny a permit.

§ 37021. Enforcement and remedies

- (a) The building commissioner, the director of health & environment, and/or the commission and/or agents of the commission shall be authorized to enforce the provisions of this chapter and to institute any and all actions and proceedings as may be necessary and appropriate to obtain compliance with same, including

injunctive relief to enjoin and restrain any violations or threatened violations thereof.

- (b) Upon request of the commission, the board of selectmen and 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.
- (c) The remedies and enforcement procedures set forth in this section (37021) may be applied separately or in conjunction with one another, at the discretion of the building commissioner and/or the commission.
- (d) Any person who violates any provision of this Bylaw, regulations thereunder or permits issued thereunder may be subject to a fine of up to \$300.00. Each day or portion thereof during which a violation continues shall constitute a separate offense and each provision of the Bylaw, regulations or permits violated shall constitute a separate offense.

§ 37023. Relationship to Wetlands Protection Act (M.G.L. Ch. 131 S. 40)

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act [M.G.L. Chapter 131, Section 40] and regulations thereunder.

[PLEASE SEE CHAPTER 1 FOR ENFORCEMENT AND PENALTIES.]