

EDGARTOWN WETLANDS PROTECTION
BY-LAW

Passed at Town Meeting, 9 April 1985
Signed by the Attorney General, 27 August 1985
Revised 25 June 1991

SECTION 1: Intent and Application:

The intent of this bylaw is to protect the wetlands of the town of Edgartown by controlling activities deemed to have a significant effect upon wetlands and water quality values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion control, storm damage prevention, fisheries, shellfish, wildlife and their habitats, recreation and preservation of natural and historic views and vistas.

No person shall remove, fill, dredge, alter, or build:

1. upon or within two hundred (200) feet of any freshwater area: wetland, marsh, bog, swamp, meadow, pond, creek, stream, or
2. upon or within two hundred (200) feet of any coastal area: bank, beach, barrier beach, dune, flat, saltwater marsh, swamp, meadow, bog, or
3. upon or within two hundred (200) feet on any saltwater estuary/creek, stream, pond, or great pond, or
4. upon or within one hundred (100) feet of the hundred year storm line as shown on the latest Federal Emergency Management Agency (FEMA) maps, or
5. upon or within three hundred (300) feet of Edgartown Great Pond, Jacob's Pond, Oyster Pond, Job's Neck Pond, Paqua Pond, Wheldon's Pond, and Crackatuxet Cove; or upon or within three (300) feet of any wetland, bank, stream, beach or dune adjacent to or draining into the above named ponds

without filing written application for a permit to so remove, fill, dredge, alter, or build upon, including such plans as may be necessary to describe such proposed activity and its effect upon the environment, and receiving and

complying with a permit issued pursuant to this bylaw.

Such application shall be on a form as prescribed by the Conservation Commission, or may be identical in form to a Notice of Intent filed pursuant to Massachusetts General Laws, Chapter 131, Section 40; shall be sent via certified mail or hand delivered to the Edgartown Conservation Commission (hereinafter called "the Commission").

The Commission shall set a filing fee for application, but no filing fee is required when the town of Edgartown files an application.

SECTION 2: Entry upon Private Property.

The Commission, its agent, officers and employees, may enter upon privately owned land for the purpose of performing their duties under this bylaw.

SECTION 3: Request to Determine if Bylaw Applies.

Upon written request of any person, the Commission shall, within thirty (30) days, make a written determination as to whether this bylaw is applicable to any land or work thereon, necessitating the filing of an application for a permit.

SECTION 4: Public Hearing.

Prior to issuing any permit (Section 7) the Commission shall hold a public hearing within thirty (30) days of the receipt of the application. Notice of the time and place of such hearing shall be given by the Commission not less than five days prior to the public hearing, by publication in a newspaper of general circulation in the town and by mailing a notice to the applicant, the Board of Health, and the Planning Board. Such hearing may be held at the same time and place as any public hearing required to be held under G.L. Ch. 131, Sec. 40. If the Commission determines that additional data or information is necessary, the hearing may be continued to a future date(s) for as many sessions as deemed necessary by a majority of the Commission members.

SECTION 5: Failure to Act.

If the Commission has failed to hold a public hearing within the thirty (30) day period as

required, or if after holding such a hearing, has failed within thirty (30) days from the date of the close of the hearing to issue a permit, the application shall be considered approved.

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 bylaw. Failure to provide adequate evidence to the Commission supporting a determination that the proposed work will not harm the interests protected by this bylaw shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or at the Commission's discretion to continue the hearing to another date to enable the applicant or others to present additional evidence.

SECTION 7: 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 interest protection by this bylaw, the Commission shall, within thirty (30) days of such hearing, issue or deny a permit for the work requested. If it issues a permit after making such a determination, the Commission shall impose such conditions as it determines are necessary or desirable for the protection of those interests, and all work shall be done in accordance with those conditions. Permits shall expire one year from the date of issuance, unless renewed prior to expiration, and all work shall be completed prior to the expiration.

SECTION 8: Appeals.

Any person aggrieved by a decision of the Commission under this bylaw may appeal to the Superior Court within sixty (60) days of the filing of the permit with the Town Clerk.

SECTION 9: Relationship to Massachusetts General Laws, Ch. 131, Sec. 40.

The Commission shall not impose additional or more stringent conditions in any order pursuant to Mass. General Laws Ch. 131, S. 40 than it imposes pursuant to this bylaw.

SECTION 10: Emergency Projects.

The notice provisions of this bylaw shall not apply to emergency projects necessary for the immediate protection of the health or safety of the citizens of Edgartown as certified in writing by the Commission.

SECTION 11: Preacquisition Violation.

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 permit issued pursuant to this bylaw, shall forthwith comply with any such order to restore such land to its conditions prior to any such violations. 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 12: Regulations.

After due notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purpose 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 effects of this bylaw.

SECTION 13: Security.

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

1. by a bond or deposit of money or negotiable securities in an amount determined by the Commission to be sufficient and payable to the town of Edgartown upon default, or
2. 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 14: Enforcement

Any person who violates any provision of this bylaw or any condition of a permit issued pursuant to it shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which a violation continues shall constitute a separate offense. This bylaw may be enforced pursuant to Mass. General Laws Ch. 40, S. 21D, by a town police officer or other officer having police powers, Commission member, or Conservation agent. Upon request of the Commission, the Board of Selectmen and Town Counsel shall take legal action as may be necessary to enforce this bylaw and permits issued pursuant to it.