

Chapter 164

WETLANDS PROTECTION

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[HISTORY: Adopted 5-8-1989 Annual Town Meeting, Art 6. Amendments noted where applicable.]

§ 164-1. Purpose.

The purpose of this chapter is to protect the wetlands, related water sources and adjoining land areas in the Town of Halifax by prior review and control of activities as deemed by the Conservation Commission which may have or are likely to have any adverse or cumulatively adverse effect upon wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution, air pollution, noise pollution, fisheries, shellfish, wildlife habitat, recreation, aesthetics, agriculture and aquaculture values (collectively, the "wetland values protected by this chapter").

§ 164-2. Statutory authority.

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

§ 164-3. Alteration prohibited.

Except as permitted by the Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon or alter the following resource areas: any freshwater wetland, including any marsh, wet meadow, bog or swamp, or within one hundred (100) feet of any freshwater wetland; any bank, beach, lake, river, pond or stream or within one hundred (100) feet of any bank, beach, lake, river, pond or stream; any land under said waters; and any land subject to flooding or inundation by groundwater or surface water or within one hundred (100) feet of such land.

§ 164-3.1. Replication of wetlands. [Added 5-14-2007 ATM, Art. 38]

Any land to be used to replicate any wetland in the Town of Halifax including the resource areas listed in § 164-3 shall be within the bounds of the Town of Halifax. Any land to be used to replicate any wetland in the Town of Halifax shall be located as close as practically possible to the original wetland. No variance or waiver shall be granted for these requirements.

§ 164-4. Definitions.

The following definitions shall apply in the interpretation and implementation of this chapter.

ALTER - Includes, 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 and gravel or aggregate of materials of any kind.
- B. Changing of pre-existing 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 which may degrade water quality.
- E. Placing of fill or removal of material which may alter land or water elevation.

- F. Driving of piles, erection or repair 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.

PERSON - Includes 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.

§ 164-5. Exemptions.

- A. This chapter shall not apply to any agricultural activity on land in agricultural use at the time this chapter is enacted. Such agricultural activity shall be subject only to the State Wetlands Protection Act, MGL C. 131, § 40, and other applicable laws as at present.
- B. Other than as stated in this section, the exceptions provided in the Wetlands Protection Act shall not apply.

§ 164-6. Coordination with other boards.

Any person filing an application or a request with the Commission shall provide a copy thereof at the same time, by certified mail or hand delivery, to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health and Building Inspector. The Commission shall not take final action until such boards and officials have had fourteen (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. The applicant shall have the right to receive any such comments and recommendations and to respond to them at a hearing of the Commission prior to final action.

§ 164-7. Notice and hearings.

- A. Any person filing an application or a request with the Commission shall at the same time 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 travelled way or body of water. Said notice shall contain such information as directed by the Commission. When the person filing the request is other than the owner, the

notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person who filed the request.

- B. The Commission shall conduct a public hearing on any application or request with written notice given at the expense of the applicant five (5) working days prior to the hearing in a newspaper of general circulation in the municipality.
- C. The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed application or request.
- D. The Commission shall issue its permit or determination, in writing, within twenty-one (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, MGL C. 131, § 40.
- F. The Commission shall have 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 boards and officials listed in § 164-6. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

§ 164-8. Application for permits and requests.

- A. A written application for permit ("application") shall be filed with the Commission to perform activities regulated by this chapter affecting resource areas protected by this chapter as described in §§ 164-1 and 164-3 above. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects or possible effects on the environment. 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 under this chapter the Notice of Intent and plans filed under the Wetlands Protection Act, MGL. C. 131, § 40.
- C. Any person desiring to know whether or not a proposed activity or an area is subject to this chapter may file, in writing, a request for determination ("request") from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.
- D. Filing fee; consulting fee. [**Amended 5-9-1994 ATM, Art. 51**]

- (1) At the time of a permit application or request for determination ("RFD") or application for certificate of compliance, the applicant shall pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act, MGL C. 131, § 40, and regulations, 310 CMR 10:00.
- (2) Upon receipt of a permit application or RFD, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the consultant fee. The specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, including wildlife habitat evaluation, hydrogeologic and drainage analysis and environmental or land use law.
- (3) The Commission may waive the filing fee, consultant fee and costs and expenses for a permit application or RFD filed by a government agency.
- (4) The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. The applicant shall pay the fee to be put into a consultant services account of the Commission which may be drawn upon by the Commission for specific consultant services approved by the Commission at one (1) of its public meetings.
- (5) The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information acquirable only through outside consultants would be necessary for the making of an objective decision.

§ 164-9. Exemptions from permit requirements.

- A. The application and permit 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, 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 seven (7) days prior to commencement of work and provided that the work conforms to performance standards adopted by the Commission.
- B. The application and permit 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 an agency of the commonwealth or a political subdivision thereof, advance notice, oral or written, has been given to the Commission or its agent prior to commencement of work or within twenty-four (24) hours after commencement, the Conservation Commission or its agent certifies the work as an emergency project, the work is performed only for

the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency, and within twenty-one (21) days of commencement of an emergency project a permit application shall be filed with the Commission for a review as provided in this chapter. Upon failure to meet these and/or other requirements of the Commission, the Commission may, after notice and/or a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

§ 164-10. Action on application.

- A. If the Commission after a public hearing determines the activities which are the subject of the application will have an adverse or cumulatively adverse effect upon the wetland values protected by this chapter, the Commission, with twenty-one (21) days of the close of the hearing, shall deny a permit or issue a permit with conditions. If it issues a permit with conditions, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.
- B. 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.
- 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 adverse or cumulatively adverse effects upon the wetland values protected by this chapter; and where no conditions are adequate to protect those values.

§ 164-11. Expiration of permit; revocation or modification.

- A. A permit shall expire three (3) years from the date of issue. Notwithstanding the above, the Commission, in its discretion, may issue a permit expiring five (5) years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed for an additional one-year period by the Commission.
- B. 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.

§ 164-12. Burden of proof on applicant.

The applicant for a permit shall have the burden of proving by a preponderance of the evidence that the work proposed in the application will not have unacceptable adverse or cumulatively adverse effects upon the wetland values protected by this chapter. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

§ 164-13. Rules and regulations.

After due notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this chapter. 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.

§ 164-14. Security.

As part of a permit issued under this chapter, in addition to any security required by any other municipal 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 (1) or more of the methods described below:

- A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission.
- B. By a conservation restriction, easement or other covenant enforceable in a court of law, executed by, paid by and duly recorded by the owner of record, running with the land to the benefit of the Town of Halifax whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

§ 164-15. 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, its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions.
- C. Upon request of the Commission, the Board of Selectmen shall provide necessary legal assistance to enforce this chapter under civil law. Upon the request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.

- D. Municipal boards and officers, including any police officer or other officers having police powers, shall have authority to assist the Commission in enforcement.

§ 164-16. Violations and penalties.

- A. Any person who violates any provision of this chapter, regulations thereunder or permits issued thereunder shall be punished by a fine of not more than three hundred dollars (\$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.
- B. As an alternative to criminal prosecution, the Commission may elect to utilize the noncriminal disposition procedure set forth in MGL C. 40, § 21D.

§ 164-17. 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 permit or determination which previously has been issued.