

BERKLEY WETLANDS BYLAW

June 5, 2023

I. Purpose

The purpose of this bylaw is to protect the wetlands, water resources, and adjoining land areas in the Town of Berkley by conditioning activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon the resource area values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion, and sedimentation control, storm damage prevention including coastal storm flowage, water quality, water pollution control, fisheries, shellfish, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, and recreation values, deemed essential to the community. This bylaw has been put into place to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (G.L.Ch.131~40) and Regulations thereunder (310 CMR10.00).

II. Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence removing, fill, dredge, build upon, define, Everything discharged into a wetland, or otherwise alter the following resource areas: any freshwater or coastal wetlands; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds of any size; rivers; streams; creeks; beaches; dunes; estuaries; the ocean; land under water bodies; lands subject to flooding or inundation by groundwater; land subject to tidal action, coastal storm flowage, or flooding; and all land that abuts wetlands. Said resource areas shall be protected whether or not they border surface waters.

III. Applications for Permits and Requests for Determination

The written application shall be filed with this Commission to perform activities affecting resource areas protected by this bylaw. This application should be the standard form set forth by the Massachusetts Department of Environmental Protection (D.E.P.).

At the time of a permit application, the applicant shall pay a filing fee as set forth by the D.E.P., and local fees as set forth by the Conservation Commission.

At the time a permit application is received, or at any time during the hearing process, the Commission is authorized to require an applicant to pay the fee for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. The Commission will select the consultant in question. As provided by Massachusetts General Law Chapter 44, Section 53G, the Berkley Conservation Commission may employ reasonable fees for the employment of outside consultants engaged by the Commission for specific external expert services. Such services shall be deemed necessary by the Commission to come to a final decision on an application submitted to the Conservation Commission according to the requirements of the Wetlands Protection Act (M.G.L. Ch. 131 Section 40), the Berkley Wetlands Protection Bylaw, the Conservation Commission Act (M.G.L. Ch. 40 Section

8C) or any other state or municipal statute, bylaw, or regulation as they may be amended from time to time. The Conservation Commission may also impose fees for other consultant services related to application review, permit conditioning, or monitoring under any above-referenced laws or regulations. Said fees for said services shall be outlined in a regulation to be adopted by a vote of the Conservation Commission in accordance with applicable law, including but not limited to M.G.L. Chapter 44 Section 53G.

The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit application or request for determination by a government agency.

The Commission shall require the payment of the consultant fee before the initiation of consulting services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment, or refusal of payment, shall be cause for the Commission to deny the application based on lack of sufficient information to evaluate whether the project meets applicable performance standards in 310 CMR 10.00 and the Berkley Wetlands Protection Bylaw or its regulations.

The applicant shall pay the fee to the Town of Berkley to fund the 53G consultant services account established by the Commission with the Town Treasurer's office, which the Commission may draw upon for specific consultant services approved by the Commission at one of its public meetings.

The Commission shall return any unused portion of the consultant fee to the applicant upon completing the project along with any accrued interest.

IV. Notices and Hearings

Any person filing a permit application with this Commission at the same time shall give written notice thereof, by certified mail (return receipt) or hand-delivered, to all abutters at their mailing address shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public street or way, and abutters to the abutters within 100 feet of the property line on which the applicant is proposing work, including any in another municipality or across a body of water.

The Commission may combine its hearing under this bylaw with the hearing conducted with the Wetlands Protection Act (G.L. Ch.131~40) and Regulations (310 CMR 10.00).

The Commission shall have the authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, including receipt of additional information from the applicant or other deemed necessary by the Commission.

VI. Permits and Conditions

If the Commission, after a public hearing, determines that the activities which are subject to the permit application or the land and water uses which will result from that place are likely to have a significant individual or cumulative effect upon the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activity requested. If it issues a permit, 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.

The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw for any or all of the following:

- failure to submit necessary information and plans requested by the Commission
- failure to meet the design specifications, standards, and other requirements in regulations of the Commission or DEP
- failure to site the project in an alternative manner with less potential impact, where such siting is clearly possible
- failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this bylaw and where no conditions are adequate to protect those values.

Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

Lands within 200 feet of rivers, ponds, and lakes and lands within 100 feet of other resource areas are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetlands or other resource. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission, therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within the 200-foot (or 100-foot) area unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by this bylaw.

To prevent wetlands loss, the Commission shall require applicants to avoid alteration where feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation.

A permit shall expire three years from the date of issuance. Any permit may be renewed once for an additional one year, provided that a request for renewal is received in writing by the Commission prior to expiration.

No work proposed in any permit application shall be undertaken until the permit issued by the Commission has been recorded in the registry of deeds and the permit holder certifies in writing to the Commission that the permit has been recorded.

VII. Setbacks

A. No subsurface sewage disposal system will be permitted within the 100-foot buffer zone of any wetland or within 200 feet of any perennial stream as shown on the USGS map 1985 or later. This setback will not be required for the renovation or replacement (but is required for the substantial enlargement) of septic systems construction prior to the effective date of this bylaw.

B. No dwelling or structure shall be built less than 50 feet from the outer edge of any wetland.

C. A 25-foot minimum undisturbed vegetated buffer zone will be required to protect wetlands and wildlife.

D. Isolated wetlands and vernal pools will be considered wetlands and afforded the same minimum setback distances for septic systems, construction, and undisturbed vegetative zones.

VIII. Regulations

Additions, deletions, and alterations to the above regulations may be made through public notice and public hearing. The Commission shall then promulgate rules and regulations to effectuate the purposes of the bylaw when voted and filed with the town clerk. 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 bylaw.

IX. Definitions

The following definitions shall apply in the interpretation of this by law.

The term "**bank**" shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

The term "**vernal pool**" shall include a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring/summer and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife.

The term "**rare species**" shall include, without limitation, all vertebrate and invertebrate animals and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife

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 bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

The term "**alter**" shall include, without limitations, the following activities when undertaken to, upon, within, or affecting resource areas protected by this bylaw:

A. Removal, excavation, or dredging of soil, sand, gravel, or aggregate 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 table
- D. Dumping, discharging or filling with any material, which may degrade water quality
- E. Placing of fill, or removing of material, which would alter elevation
- F. Driving of piles, erection, or repair of buildings or structures of any kind
- G. Placing of obstructions or objects to water flow
- H. Destruction of plant life including cutting of trees
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, for chemical characteristics of any waters
- J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater
- K. Incremental activities, which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

Except as otherwise provided in this bylaw or in regulations of the Commission, the definitions of terms in this bylaw shall be set forth in the Wetlands Protection Act (G.L. Ch. 131~40) and Regulations (310 CMR 10.00).

X. Enforcement

No person shall remove, fill, dredge, build upon, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

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 bylaw. They may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have the authority to enforce this bylaw, its regulations, and permits issued hereunder by violation notices, administrative orders (if Berkley should accept G.L. Ch. 40~21D), and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violation, or may be fined, or both.

Upon request of the Commission, the Select Board and the town council 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.

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

Any person, who violates any provision of this bylaw, regulations, permits, or administrative orders issued hereunder, shall be issued a fine of not more than \$300.00 per day or portion thereof during which a violation continues. Unauthorized fill or other alterations that remain in place shall constitute a separate offense; each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

XI. Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have an unacceptable significant or cumulative effect upon the resource area values protected by this bylaw. 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.

XII. Appeals

A decision of the Commission shall be reviewable in the Superior Court in accordance with G.L. Ch. 249~4

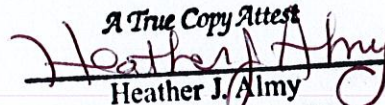
XIII. Relationship to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (G.L. Ch. 131) and Regulations (310 CMR 10.00) hereunder.

XIV. Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

Any person, who violates any provision of this bylaw, or regulations, permits, or administrative orders issued hereunder, shall be punished by a fine of \$300. Each day or portion thereof during which a violation continues or unauthorized fill or other alteration remains in place shall constitute a separate offense, and each provision of the bylaw, regulations, permits or administrative orders violated shall constitute a separate offense. The purpose of this change is to comply with the recommendations made by the Office of the Attorney General or act thereon.

A True Copy Attest

Heather J. Almy
Town Clerk, Berkley MA 12/19/23