

**Oak Bluffs
Town of Oak Bluffs
General Wetlands Bylaw**

SECTION 1 APPLICATION

The purpose of this Bylaw is to protect the wetlands of the Town of Oak Bluffs by controlling activities deemed to have a significant effect upon wetland and water quality issues, including but not limited to the following: public or private water supply, groundwater, flood control, erosion control, storm damage prevention, fisheries, shellfish, wildlife, recreation and aesthetics (collectively the "interests protected by the Bylaw").

No person shall remove, fill, dredge, alter, or build upon or within one hundred feet of any bank, freshwater wetland, beach, dune, flat, marsh, meadow, bog, swamp, or upon or within one hundred feet of any estuary, creek, river, stream, pond or lake, or within one hundred feet of any land subject to any tidal action, coastal storm flowage, flooding or inundation, or within one hundred feet of the 100-year storm line, 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 may be identical in form to a Notice of Intent filed pursuant to Massachusetts General Laws, Chapter 131, Section 40; shall be sent certified mail to the Oak Bluffs Conservation Commission (The "Commission"), and must be filed concurrently with or after application for all other variances and approvals required by the Zoning Bylaw, the Subdivision Control Law or any other bylaw or regulation have been obtained. The Commission shall set a filing fee by Regulation, but no filing fee is required when the Town of Oak Bluffs files an application for a permit.

SECTION 2: ENTRY UPON PRIVATE PROPERTY

The Commission, its agents, 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 twenty-one days, make a written determination as to whether this Bylaw is applicable to any land or work thereon.

SECTION 3.1: HEARING

The Commission shall hold a public hearing on the application within twenty-one days of its receipt from the applicant or his agent.

SECTION 3.2: BURDEN OF PROOF

The applicant shall have the burden of proving by a preponderance of 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 in the Commission's discretion to continue the hearing to another date to enable the applicant or others to present additional evidence. The Commission and applicant may also mutually agree to continue the hearing.

3.2 CORRECTION

Voted to correct wording in Article 38 of the Annual Town Meeting of 1983 by changing the last sentence of Section 3.2 to read:

"The Commission and the applicant may also mutually agree to continue the hearing."
(Voted STM 11/85 Art.10)

SECTION 3.3 PERMITS AND CONDITIONS

If, after the public hearing, the Commission determines that the area which is the subject of the application is significant to the interests protected by this Bylaw, the Commission shall, within 21 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 3.4 APPEALS

Any aggrieved person may appeal the Order of Conditions issued by the Commission within 20 days to the Superior Court.

SECTION 3.5 RELATIONSHIP TO MASS. GEN. LAWS. Ch.131, Section 40

Since the Wetlands Protection Act Mass. Gen. Laws, CH 131, Section 40, establishes minimum standards, the Commission shall not impose additional or more stringent conditions in any Order pursuant to Mass. Gen. Laws, Ch.131, Section 40 than it imposes pursuant to this Bylaw.

SECTION 4 EMERGENCY PROJECTS

The notice provision of this Bylaw shall not apply to emergency projects necessary for the immediate protection of the health or safety of the citizens of Oak Bluffs as certified in writing by the Commission.

SECTION 5 PRE-ACQUISITION 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 condition prior to any such violations. The owner of record at the time of the violation shall compensate the person for such restoration. No action, civil or criminal, shall be brought against such persons unless commenced within three years of the violation of this Bylaw.

SECTION 6 REGULATIONS

After due notice and public hearing, the Commission may promulgate rules and regulations 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 suspend or invalidate the effects of this Bylaw.

(Voted 10/17/06 to remove from Section 6 (Regulations) the portion entitled "Pier regulations for Lagoon and Sengekontacket Ponds" numbered 1 through 3j. (Pier Regulations are now part of the Oak Bluffs Wetlands Bylaw Regulations)

SECTION 7 SECURITY

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

- a. By a bond or deposit of money negotiable securities in an amount determined by the Commission to be sufficient and payable to the Town of Oak Bluffs
- b. 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 8 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 continued shall constitute a separate offense. This Bylaw may be enforced pursuant to Mass. Gen. Laws, Chapter 40, Section 21-D by a Town Police Officer or other officer having police powers.

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.
(Voted 4/83)