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# TOWN OF GROVELAND

  

# WETLAND PROTECTION BYLAW AND REGULATIONS

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## I. PURPOSE

The purpose of this Bylaw (or the Town of Groveland Ordinance) is to protect the wetlands, related water resources, and adjoining land areas in the Town of Groveland by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public or private water supply, ground water, 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, aquiculture, and recreation values, deemed important to the community (collectively, the “resource area values protected by this Bylaw”). This Bylaw is intended 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 CMR 10.00

## II. JURISDICTION

### II.1 Areas Subject to Protection under the Bylaw.

The following resource areas are subject to protection under the Bylaw:

- a. Fresh Water Wetlands,
- b. Marshes,
- c. Wet Meadows,
- d. Bogs,
- e. Swamps,
- f. Lakes,
- g. Rivers,
- h. Ponds,
- i. Streams,
- j. Land within **100 feet** of the above resource areas,
- k. Land under water in the above areas,
- l. Land subject to flooding or inundation by groundwater or surface water, and
- m. Land within **100 feet** of said land subject to flooding or inundation,
- n. Land within **200 feet** of the mean high water mark along the Merrimack River.

### II.2 Activities Subject to Regulation under the Bylaw.

Any activity proposed or undertaken which will remove, fill, dredge, build upon, or alter a resource area specified in paragraph 1, herein is subject to regulation under the Bylaw and requires the filing of a Notice of Intent or (RFD) Request for Determination. In the event the Conservation Commission determines that an activity outside said resource areas has altered an area subject to protection under the Bylaw, it shall impose such conditions on the activity or any portion thereof as it deems necessary to contribute to the protection of the interests identified in the Bylaw.

## III. CONDITIONAL EXCEPTIONS

The application and permit required by this Bylaw shall not be required for 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 advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agency certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this Bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

Other than stated in this section, the exceptions provided in the Wetlands Protection Act, G.L. Ch. 131, §40, and Regulations, 310 CMR 10.00, shall not apply under this Bylaw.

#### **IV. APPLICATION FOR PERMITS AND REQUESTS FOR DETERMINATION**

Written application shall be filed with the Commission to perform activities affecting resource areas protected by this Bylaw. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this Bylaw. See Section XV. 4a - v. for plan requirements.

The Commission in appropriate cases may accept as the permit application and plans under this Bylaw the Notice of Intent and plans filed under the Wetlands Protection Act. G.L. Ch. 131, §40, and Regulations, 310 CMR 10.00.

Any person desiring to know whether or not a proposed activity or an area is subject to this Bylaw may in writing request a determination from the Commission. Such a request for Determination (RFD) shall include information and plans as are deemed necessary by the Commission. Said RFD shall be submitted to the Commission on the appropriate form as issued by the D.E.P.

After public notice and public hearing the Commission is authorized to include in any regulations adopted under this bylaw a fee schedule imposing application fees for permits, determinations, inspections, waivers and certificates of compliance. This application fee is in addition to that required by the Wetlands Protection Act, G.L. c. 131, S. 40, and shall be commensurate with the costs incurred by the Commission. Failure to pay any fee required by regulations duly promulgated by the Commission shall be grounds for denial of the application.

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 the resource area survey and delineation, analysis, and environmental or land use law.

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

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 of its public meetings.

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.

The Commission shall return any unused portion of the consultant fee to the applicant unless the Commission decides at a public meeting that other action is necessary. Any applicant

aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provision of the Massachusetts General Laws.

The Maximum consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be according to the following schedule:

<u>PROJECT COST</u>		<u>MAXIMUM FEE</u>
UP TO	\$ 250,000	NO FEE
\$ 250,001	\$ 500,000	\$2,500
\$ 500,001	\$ 1,000,000	\$5,000
\$1,000,001	\$ 1,500,000	\$7,500
\$1,500,001	\$ 2,000,000	\$10,000

Each additional \$500,000 project cost increment (over 2,000,000) shall be charged at an additional \$2,500 maximum fee per increment.

The project cost means the estimated, entire cost of the project including, but not limited to, building construction, site preparation, landscaping, and all site improvements. The consultant fee shall be paid pro rate for that portion of the project cost applicable to those activities within resource areas protected by this Bylaw. The project shall not be segmented to avoid being subject to the consultant fee. The applicant shall submit estimated project costs at the Commission's request, but the lack of such estimated project costs shall not avoid the payment of the consultant fee.

The town hereby accepts the provisions of G.L. Ch.44, §53E1/2 for the purpose of administering the consultant fee provisions of this Bylaw.

## V. NOTICE AND HEARINGS

Any person filing a permit application or a RFD with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice to abutters shall state where copies of the application may be examined and/or obtained by abutters. An affidavit of the person providing such notice or the original returned receipt and signed certified mail receipts, with a copy of the notice as mailed or delivered, shall be filed with the Commission along with a certified abutters list. 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 to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any permit application or RFD, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper or general circulation in the municipality.

The Commission shall commence the public hearing within 21 days from the receipt of the completed permit application or RFD unless an extension is authorized in writing by the applicant.

The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

The Commission in an appropriate case may combine its hearing under this Bylaw with the hearing conducted under the Wetlands protection Act, G.L. Ch. 131 §40, and Regulations, 310 CMR 10.00.

The Commission shall have authority to continue the hearing to a certain date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in §VI.

## **VI. COORDINATION WITH OTHER BOARDS**

Any person filing a permit application or RFD with the Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the Planning Board, Board of Health and Building Inspector. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality, if the application of RFD pertains to property within 300 feet of the municipality. An affidavit of the person providing notice or the original certified mail return receipts along with a copy of the notice as mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the Boards and officials have had at least 14 days from the receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account in rendering a final decision. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

## **VII. PERMITS AND CONDITIONS**

If the Commission, after a public hearing, determines that the activities which are subject to the permit application of the land and water uses which will result therefrom 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 activities 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 shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas through the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

The Commission is empowered to deny a permit for failure to meet the requirements of this Bylaw; 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 the regulations of the Commission; for 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.

Land within 100 feet of specific resource areas are presumed important to the protection of these resources because activities undertaken in close proximity to wetlands and other resources have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater, degraded, 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 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 the Bylaw.

To prevent wetland loss, the Commission shall require applicants to avoid wetlands alteration wherever 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, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

A permit shall expire two years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that a request for renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

For good cause the Commission may revoke or modify a permit or determination issued under this Bylaw after notice to the holder of the permit or determination, notice to the public, abutters, and town boards, pursuant to § V and § VII, and a public hearing.

The Commission in an appropriate case may combine the permit or determination issued under this Bylaw with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act, G.L. Ch. 131, §40, and Regulations, 310 CMR 10.00.

**No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies; and until the holder of the permit certifies in writing to the Commission that the permit has been recorded.**

## VIII. DEFINITIONS

In addition to the definitions of 310 CMR 10.00, which are incorporated herein by reference, the following definitions shall apply in the interpretation and implementation of this Bylaw.

The term "bank" shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual flow level, and the upper boundary being the first observance 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 and/or 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 Wildlife and Fisheries.

The term "rare species" shall include, without limitation, all vertebrae and invertebrate animal and plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

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 representative, agents, or assigns.

The term "alter" shall include, without limitation, 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 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 which may degrade water quality;
- e. Placing of fill, or removal 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 in water;
- h. Destruction of plant life including cutting of trees;
- i. Changing temperature, biochemical oxygen demand, or other physical, biological, or 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 ground water;

- k. Application or pesticides or herbicides;
- l. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this Bylaw.

Except as otherwise provided in the Bylaw or in regulation of the Commission, the definitions of terms in this Bylaw shall be as set forth in the Wetlands Protection Act, G.L. Ch. 131, §40, and Regulations 310 CMR 10.00.

## **IX. REGULATIONS**

### **IX.1 Burden of Proof.**

The applicant for a permit shall have the burden of providing by a preponderance of the credible evidence that the work proposed in the application shall not have an unacceptable, significant or cumulative negative effect upon the values of the resource area(s) protected by this Bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be deemed sufficient cause for the Commission to deny a permit or grant a permit with conditions.

### **IX.2 Presumption Concerning Title 5 of the State Environmental Code.**

In accordance with 310 CMR Section 10.03(3), except the following additional restrictions apply:

- a. None of the components of the subsurface disposal system may be located within 50 feet of the following resource area: Freshwater Wetlands, Marshes, Wet Meadows, Bogs, Swamps, Lakes, Rivers, Ponds, or streams.
- b. The leaching facility of said system, including the reserve area, shall be set back 100 feet from any resource area identified in paragraph 10.03(2)(a) herein.
- c. The setback distance specified above shall not be required for the renovation or replacement (but is required for the substantial enlargement) of septic systems constructed prior to the date these Regulations are promulgated, provided such work has been approved by the Groveland Board of Health, as required by law.

### **IX.3 Dimensional Regulations**

- a. Underground Storage Tanks for Chemical and Petroleum Products, regardless of size, shall not be located within 100 feet of any resource area described in Section II.
- b. No Paddock shall be installed within 100 feet of any resource area described in Section II (except for 100 feet Buffer Areas).
- c. Commercial, Institutional, Industrial Structures and associated parking facilities shall not be installed within 100 feet of any resource area described in Section II (Except for 100 feet Buffer Areas).
- d. Any other structure requiring a building permit including, but not limited to, Dwellings, Garages, Decks, Storage Sheds, Swimming Pools, Etc. shall not be installed within 75 feet of any resource area described in Section II (Except for 100 feet Buffer Areas).
- e. Driveways and utility service connections or mains shall not be installed within 25 feet of any resource area described in Section II (Except for the 100 feet Buffer Areas).
- f. Manure shall not be stockpiled or stored within 100 feet of any Resource Area described in Section II (Except for the 100 feet Buffer Areas).

### **IX.4 Seasonal Restrictions**

- a. Work within a resource area shall be performed during "low flow" months of the year whenever practical. Springtime is not the proper time of year for working within a wet area.

The Commission shall impose construction date limitations on an as needed basis determined by each individual project.

- b. All stabilization work must commence by October 15 and be in place and fully functional prior to November 1. This shall include any and all required planting (or temporary protection methods), slope protection, and pavement as required by the Commission in its decision. No work within any resource area described in Section II shall be permitted after November 1 or before April 15 of the following year.

## **X. WETLANDS (FRESHWATER WETLANDS, WET MEADOWS, MARSHES, SWAMPS & BOGS)**

### **X.1 Preamble.**

Freshwater Wetlands are likely to be significant to public or private water supply, ground water supply, flood control, storm damage prevention, prevention of pollution, the protection of fisheries and wildlife habitat, recreation, and aesthetics.

The plant communities, soil, and associated low topography of Freshwater Wetlands remove or detain sediments, nutrients (such as nitrogen and phosphorus) and toxic substances (such as heavy metal compounds) that occur in runoff and flood waters.

Some nutrients and toxic substances are detained for years in plant root systems or in the soils. Others are held by plants during the growing season and released as the plants decay in the fall and winter. This latter phenomenon delays the impacts of nutrients and toxins until the cold weather period, when such impacts are less likely to reduce water quality.

Freshwater wetlands are areas where groundwater discharges to the surface and where, under some circumstances, surface water discharges to the groundwater. The profusion of vegetation and the low topography of Freshwater Wetlands slow down and reduce the passage of flood waters during periods of peak flows by providing temporary flood water storage, and by facilitating water removal through flood damage to private and public property. During dry periods the water retained in Freshwater Wetlands is essential to the maintenance of base flow levels in rivers and streams, which in turn is important to the protection of water quality and water supplies.

Wetland vegetation provides shade that moderates temperatures important to fish life. Wetlands and adjacent water bodies and waterways provide food, breeding habitat and cover to fish. Fish populations in the larval stage are particularly dependent on food provided by over-bank flooding which occurs during peak flow periods (extreme storms), because most river and stream channels do not provide sufficient quantities of the microscopic plant and animal life required.

Wetland vegetation supports a wide variety of insects, reptiles, amphibians, mammals, and birds which are a source of food for important game fish. Freshwater Wetlands are probably the Town's most important habitat for wildlife. The hydrologic regime, plant community composition and structure, soil composition and structure, topography and water chemistry of Freshwater Wetlands provide important food, shelter, migratory and overwintering areas, and breeding areas for many birds, mammals, amphibians, and reptiles. A wide variety of vegetative wetland plants, the nature of which are determined in large part by the depth and duration of water, as well as soil and water composition, are utilized by varied species as important areas for mating, nesting, brood rearing, shelter, and (directly and indirectly) food. The diversity and interspersed structure is also important in determining the nature of its wildlife habitat. Different habitat characteristics are used by different wildlife species during summer, winter, and migratory seasons.

### **X.2 Identification.**

The Groveland Bylaw is not restricted to protection of Bordering Vegetated Wetlands, but applies to all wetlands. Wetlands and their boundaries shall be identified in the manner designated in G.L. C 131 Section 40, incorporated herein by reference. Where appropriate, the Commission may use additional criteria for the identification of wetlands and their boundaries, including, but not

limited to, soil type.

Only Isolated Wetlands greater than 5000 square feet in area are subject to Protection under these Regulations.

### **X.3 Review Period.**

Wetland boundary delineations shall be reviewed only between April 1 and December 1 of each year, unless the Commission grants a waiver on a particular site due to the low probability of error, or reserves the right to adjust the boundary during the growing season.

### **X.4 Presumption.**

Where a proposed activity involves the removing, filling, dredging, or altering of a Freshwater Wetland, the Commission shall presume that such area is significant to the interests specified in paragraph X.1 herein.

### **X.5 General Performance Standards.**

Any proposed work in Freshwater Wetland shall not destroy or otherwise impair any portion of said area. However, and at its sole discretion, the Commission may issue a Permit allowing work which results in the loss of up to 5,000 square feet of Freshwater Wetlands when said area is replaced in accordance with the following general conditions and any specific conditions the Commission deems necessary to ensure that the replacement area will function in a manner similar to the area that will be lost.

- a. The surface of the replacement area to be created (the "replacement area") shall be at least equal to that of the area which will be lost (the "lost area"). At the discretion of the Commission, the replacement area may be required to exceed the size of the lost area.
- b. The ground water and surface water elevations of the replacement area shall be approximately equal to that of the lost area.
- c. The overall horizontal configuration and location of the replacement area with respect to the bank shall be similar to that of the lost area.
- d. The replacement area shall have an unrestricted hydraulic connection with the same water body or waterway associated with the lost area.
- e. The replacement area shall be located within the same general area of the water body or reach of the waterway as the lost area.
- f. A minimum of 75% of the replacement area shall be reestablished with indigenous wetland plant species within two growing seasons, and prior to said vegetative establishment any exposed soil in the replacement area shall be temporarily stabilized to prevent erosion in accordance with the U.S. Soil Conservation Service methods.
- g. The replacement area shall be provided in a manner which is consistent with all other performance standards for each resource area described in these regulations.

### **X.6 Alteration of finger-like Wetland Areas.**

Notwithstanding the provisions of paragraph X. 5a - g herein, the Commission may issue a Permit allowing work which results in the loss of a portion of the Freshwater Wetlands when:

- a. Said portion has a surface area less than 500 square feet;
- b. Said portion extends in a distinct linear configuration ("finger-like") into adjacent uplands; and
- c. In the judgment of the Commission it is not reasonable to scale down, redesign or otherwise change the proposed work so that it could not be completed without the loss of said Wetland.

**X.7 Limited Projects in Wetlands.**

Notwithstanding the provisions of paragraphs X.5 and X.6 herein, the Commission, at its sole discretion, may issue a permit for the limited range of projects identified in 310 CMR 10.53

**XI. LAND UNDER WATER BODIES AND WATERWAYS (RIVERS, STREAMS, PONDS, LAKES)**

Refer to Sections I, II, and X of the Bylaw.

**XII. LAND SUBJECT TO FLOODING**

Refer to Sections I, II, and X of the Bylaw.

**XIII. RARE OR ENDANGERED SPECIES.**

Refer to Sections I, II, and X of the Bylaw. Any project show to be within an area of an endangered, threatened or special concern species as shown on the current Estimated Habitat Map shall submit notice of the project to Massachusetts Natural Heritage and Endangered Species Program in accordance with 310 CMR 10.37 and 10.59. Notification shall be a required portion of the filing before the Commission.

**XIV. BUFFER ZONE****XIV.1 Preamble.**

It has been the Commission's experience that any project undertaken in close proximity to a Wetland resource area is likely to result in some type of alteration, either immediately, as a consequence of construction, or over a longer period of time, as a consequence of daily operation of the completed project. Accordingly, these regulations require that any person intending to perform work within 100 feet of a resource area must submit to the Commission either a RFD or a Notice of Intent. This way, the Commission has an opportunity to review the proposed project to determine whether any alteration of the resource area will occur, and whether any resulting alteration is in compliance with this or other applicable performance standards.

If in response to a Request for Determination of Applicability, the Commission finds that work within the Buffer Zone will not alter the Resource area, it may issue a Negative Determination OF Applicability, with or without conditions.

**XIV.2 Presumption.**

Based on experience to date with projects in the Buffer Zone, the Commission may presume that work in the categories below closer than the tabulated distances from the Resource protected by the Buffer Zone will result in an alteration of the Resource.

Refer to Section IX.2, IX.3, and IX.4 for regulations concerning subsurface disposal systems, dimensional restrictions and setbacks and calendar dates for work within the Buffer Zone.

The following activities within the Buffer Zone will typically be considered not to have a Negative effect on an adjacent Resource Area.

- a. Landscape plantings, to within 25 feet of the protected area, provided that areas disturbed are mulched immediately and there is no change in grade. Species of plants likely to invade the Resource area shall be prohibited.
- b. Construction or installation of fences or structures that do not require a building permit where not extensive filling or grading of the area is involved.

**XIV.3 Additional Restrictions along the Merrimack River.**

**Preamble.** The Merrimack River and its banks are a vital part of our Ecosystem. Many species rely entirely on the river as a habitat to feed, reproduce and survive. Some of these species are listed as rare, threatened or endangered, such as the Bald Eagle. Deer, Moose and numerous other mammals as well as birds, reptiles, amphibians and fish also rely on this habitat for survival.

A 200-foot no-work zone (measured horizontally from the mean high tide water mark) shall be established along the bank of the Merrimack River. No cutting of trees, undergrowth, brush, etc., shall be permitted in this area. Access to the River shall be permitted by one 7 foot max. wide path as described in section XIV.4. The path shall be used solely for foot traffic access to the water's edge or a private dock. The wooded area must be maintained with a natural leaf litter. No planting of other than indigenous species shall be permitted (including any species of grass). No fertilizers, Pesticides, or Herbicides shall be permitted within this area.

**XIV.4 Cutting of Vegetation.**

(Except as established in paragraph 3 of this section)

**XIV.4.a No-cut Zone.**

There shall be a no cut zone 25 feet in depth (measured horizontally from the mean annual high water mark) adjacent to the protected Resource. Vegetation in this zone shall not be cut or trimmed in any manner. A single path to the Resource area per lot may be created and maintained if limited to seven (7) feet in width. Paths on adjacent lots shall be separated by a minimum of 25 feet.

**XIV.4.b Understory.**

Mowing or cutting vegetation to within 25 feet (measured horizontally from the mean annual high water mark) of the protected Resource area is allowed without filing a Notice Of Intent, provided that soil is not exposed to erosion and that sod cover or natural litter is maintained.

**XIV.4.c Overstory/Canopy.**

To promote recharge of the groundwater and avoid excessive runoff, not more than 40% of the trees in the Buffer Zone shall be removed. No clear cutting of trees shall be permitted within any Buffer Zone. Minimal clearing to allow erection of permitted structures will be allowed. All permissible cutting shall be done in such a manner so as to ensure that a well distributed stand of trees, by size, and other vegetation remains throughout the Buffer Zone.

**XIV.4.d Pre-existing Use.**

Landscaping in a Buffer Zone in existence on the date these regulations are promulgated may be maintained. However, landowners are encouraged to comply with these regulations in order to protect the values identified in the Groveland Wetland Protection Bylaw.

**XIV.5 Limited Projects in the Buffer Zone.**

Notwithstanding the provisions of paragraphs XIV.2 and XIV.3 herein, the Commission at its sole discretion may issue a Permit for execution of work in the Buffer Zone of the limited range of projects identified in 310. CMR 10.53

**XV. PROCEDURES****XV.1 Bylaw.**

The procedures detailed in the Bylaw shall apply.

**XV.2 Review of Materials.**

All materials requested by the Commission for review shall be submitted at least 14 days prior to a subsequent posted meeting during which a decision is to be rendered.

**XV.3 Copies.**

All Notices of Intent and Request for Determination applications shall contain two (2) sets of the complete filing.

**XV.4 Plan Requirements.**

The following requirements apply to plans submitted. At its sole discretion, and with the exception of subparagraphs h), i), j), k), l), r), the Commission may relax these requirements for small projects.

- a. Sheet Size: Maximum 24 in. By 36 inches
- b. Scale: Not smaller than 1 inch = 50 feet
- c. Title Block: Located along the right hand edge
  - 1) Name of owner of record, applicant, surveyor/PE (if involved)
  - 2) Lot number, street number, street, assessor's map and lot number.
  - 3) Original date
  - 4) Revision area for dates and nature of revisions
  - 5) Scale
- d. North Arrow
- e. Locus
- f. Nearest utility pole number, if applicable
- g. Reference benchmark
- h. Legend depicting all natural resources
- i. All resource areas
- j. Wetland boundaries indicated by number points corresponding to flags placed in field.
- k. 100 foot buffer zone
- l. Off-site resource areas within 100 feet of proposed work
- m. Existing improvement, e.g. buildings, stone walls, trails, trees, etc.
- n. All existing topography and proposed contours at no less than 2' intervals.
- o. Cross-sections
- p. Location of well and septic system with reserve area
- q. [void]
- r. Erosion/sedimentation control measures
- s. Replication areas with plantings and a plant legend
- t. All proposed drainage improvements, discharge points, retention and detention areas with calculations.
- u. Property boundaries, rights-of-way, easements, restrictions
- v. 100 year flood plain boundary and elevation

**XV.5 Abutter List.**

The abutter's list is to be certified by the assessor's office.

**XV.6 Consultant Services.**

In those cases wherein Section IV of the Bylaw (Application for Permits and Requests for Determination) is applicable, a contract for consultant services shall be signed by the Commission and such services shall be funded by the applicant prior to any further action by the Commission on the Notice of Intent.

**XV.7 Advertizing Fee.**

The advertizing fee for public Notice will be billed directly to the applicant by the newspaper in which the project is advertized.

**XV.8 Hardship.**

The Commission, in its sole discretion, may permit a project in a resource area if denial would result in effectively taking the use of the property from the owner. In such cases the Commission may modify the scope and detail of the proposed project to minimize impact on the values protected by the Bylaw.

**XVI. EFFECTIVE DATE**

The effective date of the by-law and regulations contained herein shall be as provided in G.L. c.40 § 32. The Regulation shall not, however, apply to:

- (a) any structure or use lawfully in existence or lawfully begun prior to the effective Date;
- (b) any structure or use which is the subject of either a pending application, otherwise known as a Notice of Intent, or a Request for Determination of Applicability, filed prior to the effective date;
- (c) any structure or use for which any extensions of or modifications or amendments to any existing wetlands permit, any now or hereafter be issued, the original Notice of Intent for which was filed prior to the Effective Date;
- (d) any lot for which a preliminary or definitive plan for subdivision has been submitted to the Groveland Planning Board and remains pending prior to the Effective Date pursuant to Sections 3.2 ("Preliminary Plan") and 3.3 ("Definitive Plan") of the Rules and Regulations governing the Subdivision of Land in the Town of Groveland and Chapter 41 of the General Laws;
- (e) Any proposed structure or use on any lot existing prior to the Effective Date in which a proposed structure or use **cannot** fully comply with the Regulations due to lot size, shape, or topography in which event any such proposed structure or use shall comply with these Regulations to the extent reasonably capable of so-doing as determined by the Commission in its sole discretions. **Financial limitations shall not be deemed as a reason for non-compliance on any new construction if the dimensional requirements can be met.**

The parcels of land excepted from the Regulations pursuant to XVI. (a) - (e) above shall, however, together with all other land which is subject to the Bylaws, remain subject to the Bylaw and Regulations in effect immediately prior to the Effective Date.

**XVII. SECURITY**

As part of a permit issued under this Bylaw, 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 thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods described on the following page:

- 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, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit;
- B. By a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

### **XVIII. ENFORCEMENT**

No person shall remove, fill, dredge, build upon, degrade, 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 and 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 authority to enforce this Bylaw, its regulations, and permits issued hereunder by violation notices, administrative orders and civil and criminal court actions, and by non-criminal disposition pursuant to G.L. c. 40, § 21D. 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 violations, or may be fined, or both.

Upon request, the Commission, the board of selectmen and the 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 the criminal law.

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

Any person who violates any provision of this Bylaw, or regulations, permit or administrative orders issued thereunder, shall be punished by a fine of not more than \$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.

### **XIX. APPEALS**

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

### **XX. RELATION TO THE WETLANDS PROTECTION ACT**

This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statues, independent of the Wetland Protection Act, G.L. Ch. 131, §40, and Regulations, 310 CMR 10.00, thereunder.

### **XXI. 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.