

## CHAPTER 9 ENVIRONMENT

### 9.2. WETLANDS PROTECTION

#### Section I: GENERAL PROVISIONS

##### (A) Introduction

These regulations are promulgated by the Carver Conservation Commission pursuant to the authority granted to the Commission under Massachusetts General Law Chapter 40, Section 8C.

##### (B) Purpose

The purpose of this Bylaw is to protect the wetlands, related water resources, and adjoining land areas in the Town of Carver by controlling activities deemed by the Carver Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following:

- a. Public or private water supply,
- b. Groundwater and groundwater quality,
- c. Surface water and surface water quality,

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- d. Flood control,
- e. Erosion and sedimentation control,
- f. Prevention of water pollution,
- g. Storm drainage,
- h. Fisheries,
- i. Wildlife habitat,
- j. Recreation,
- k. Agriculture,
- l. Aesthetics,
- m. Fish/shellfish habitat,
- n. Rare plant and animal species,
- o. Riverfront areas.

In addition, the Commission shall provide clear guidance to applicants regarding the policies that the Commission has determined are necessary to protect wetland Resource Areas based upon Carver's particular topography and hydrology, by the unique and special value these resource areas have to the Carver residential and agricultural community, and the significant past experience of the Commission with wetlands protection.

### (C) Statement of Jurisdiction

- (1) Except as authorized by a vote of the Commission as provided by this Bylaw, or as exempted under 310 CMR 10.04 as land in agricultural use, no person shall remove, fill, dredge, alter or build upon or within 100 feet of: any bank, wetland, marsh, swamp, bog, beach, or wet meadow, pond or lake; any land under said waters; any land subject to flooding or inundation by groundwater or surface water; or the 100 year flood plain.
- (2) Except as authorized by the Commission as provided by this Bylaw, no person shall remove, fill, dredge, alter or build upon or within 200 on each side of perennial rivers and streams.
- (3) Except as authorized by the Commission through the issuance of a variance as defined in Section V of this Bylaw and the issuance of a Notice of Intent as defined by Section II of this Bylaw, or as exempted under 310 CMR 10.04 as land in agricultural use, no person shall build or enlarge any structure, parking lot or impervious surface upon or within 65 feet of: any wetland, marsh, meadow, bog or swamp; any bank; any lands bordering on any lake, river, pond, stream or creek; or any land under said

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waters; or any land subject to flooding or inundation by groundwater or surface water.

- (4) Except as authorized by the Commission through the issuance of a variance as defined by Section V of this Bylaw and the issuance of a Notice of Intent as defined by Section II of this Bylaw, no person shall build any residential dwelling within 100 feet of a cranberry bog.

### **(D) Exceptions: Public Utilities and Emergency Repairs**

- (1) The filing of a Notice of Intent as required under this Bylaw shall not be required for maintaining, repairing or replacing an existing and lawfully place structure or facility used in the service of the public to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph, or other telecommunication services, provided that the structure or facility is not substantially changed or enlarged.
- (2) Written notice must be given to the Commission at least 14 days prior to the commencement of such work and written permission must be granted by the Commission before any work begins.
- (3) The filing of a Notice of Intent required by this by-law shall not be required for emergency work necessary for the protection of the health or safety of the public provided that the work is performed or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof.
- (4) The Commission shall be notified prior to the commencement of emergency work or within 24 hours after commencement in order to certify the work as an emergency project and that the work is performed only for the time and place certified by the Commission for the limited purpose to abate the emergency.

## **Section II: FILING PROCEDURES**

### **(A) Request for Determination of Applicability**

- (1) A Request for Determination of Applicability shall be submitted to the Commission by certified mail or hand delivery to the Commission office located at the Town Hall.
- (2) The Request for Determination of Applicability shall be in the form shown in the Appendix marked "Form A".

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- (3) The Request for Determination of Applicability shall be accompanied by 8 complete copies the applicant's plan which should include sufficient information to enable the Conservation Commission to determine the applicable scope of the project.
- (4) The Request for Determination of Applicability shall be accompanied by a check or money order made payable to the Town of Carver for \$25.00 to cover administrative costs.
- (5) The Request for Determination of Applicability shall be accompanied by a check or money order made payable to the local newspaper designated by the Commission to cover the publication costs required in accordance with the open meeting law, M.G.L. c. 39, sec.23B.
- (6) The Request for Determination of Applicability shall be accompanied by a certification in the form of an affidavit of service shown in the Appendix marked "Form B" informing the Department of Environmental Protection and the owner, if the owner is not the applicant, that a determination is being requested under M.G. L. c. 131, sec. 40.
- (7) The Conservation Commission shall hold a public hearing within 21 days of its determination that the applicant's filing is complete. Prior to making such determination, the Conservation Commission may request additional information pertinent to the application.

### (B) Notice of Intent

- (1) A Notice of Intent shall be submitted to the Commission by certified mail or by hand delivery to the Commission office located at the Town Hall.
- (2) A Notice of Intent shall be in the form shown in the Appendix as "Form C".
- (3) The Notice of Intent shall be accompanied by 8 complete copies of the applicant's plan which should include sufficient information to enable the Commission to determine the applicable scope of the project.
- (4) The Commission at all times reserves the right to require that applicant's Notice of Intent be submitted by a professional person such as a land surveyor or civil engineer.
- (5) The Notice of Intent shall be accompanied by a filing fee the amount of which shall be determined by 801 CMR 4.02(310) (Executive Office for

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Administration and Finance) plus an additional cost of \$50.00 to cover administrative expenses. Payment shall be in the form of a check or money order.

- (6) The Notice of Intent shall be accompanied by a check or money order made payable to the local newspaper designated by the Commission to cover the publication costs required in accordance with the open meeting law, M.G.L. c. 39, sec. 23B.
- (7) The Commission shall have the authority to deny any project in which it determines that the application is incomplete or requires additional information not provided by the applicant.
- (8) Any person filing a Notice of Intent with the Commission shall provide the Commission with an affidavit confirming that all appropriate town officials, committees, or boards having joint jurisdiction over the proposed project have been provided with a copy thereof by certified mail or hand delivery.
- (9) The Commission shall not take final action pursuant to a Notice of Intent until all officials and boards having joint jurisdiction over the proposed project have had at least 14 days from receipt of notice to file written comments and recommendations with the Commission.
- (10) The Commission shall have the 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 and deemed necessary by the Commission in its discretion or by other town boards and officials, as appropriate.

### (C) Notice To Abutters and Property Owners

- (1) Any person filing a Notice of Intent with the Commission shall also give written notice thereof, by certified mail or hand delivery, to all abutters using the most recent applicable tax list of the assessors.
- (2) Abutters shall include owners of land directly opposite on any public or private street or way, and the abutters to abutters within 100' of the property line of the applicant, including in any other municipality.
- (3) The notice to abutters shall include a complete copy of the applicant's plan if the Commission so requests or shall state where copies may be examined or obtained by the abutters.

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- (4) The applicant shall submit a complete copy of both the permit application and the determination by the Commission regarding the application to the property owner and any other persons determined by the Commission as eligible to receive such information.
- (5) The applicant shall inform all persons designated by the Commission as land owners other than the applicant, abutters, or persons determined by the Commission to be eligible to receive such information of the time and location of the public hearing scheduled by the Commission. Notice shall be given by certified mail or hand delivery at least 14 days prior to the public hearing.
- (6) The applicant shall provide the Commission with an affidavit confirming that all appropriate person or persons have been provided with the appropriate notice and plans as determined by the Commission.

### (D) Consultant Fee

(1) Upon receipt of a permit application or request for determination of applicability, or at any point during the hearing process, 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, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydro geologic, and drainage analysis; and researching environmental or land use law.

(2) The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. If a fund for consultant expenses and fees is authorized by the town meeting, or by any general or special law, the applicant's fee shall be put into such fund, and the Commission may draw upon that fund for specific consultant services approved by the Commission at one of its public meetings. Any unused portion of the consultant fee shall be returned to the applicant unless the Commission decides at a public meeting that additional services will be required.

(3) 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. Any applicant aggrieved by the imposition of, or size

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of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws.

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

(5) The maximum consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be according to the following schedule:

	Project Cost	Maximum Fee
Up to	\$100,000	\$500
\$100,001	\$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 an additional \$2,500 maximum fee per increment.

(6) 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 rata 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."

### (E) Rules and Regulations

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

## Section III: PLANS

### (A) General

The applicant shall provide the following information upon submission of the application:

1. All drawings shall be drawn with the title designating the name of the project, location and names of the person or persons preparing the drawings, and the date prepared, including the last revision date
2. Drawings shall be stamped and signed by a duly qualified Registered Land Surveyor of the Commonwealth of Massachusetts. Plans

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depicting proposed drainage or septic systems must be stamped by a Registered Professional Engineer.

3. An 8 " x 11" photocopy of the U.S.G.S. quad sheet, showing location of the proposed activity and the outline of the area in which the activity is located.

4. An 8 " x 11" section of the Town of Carver property map on which the site of the proposed activity is outlined in red.

### (B) Technical Data

The technical data shall be in narrative form with calculations submitted as necessary to substantiate the designs proposed and shall include:

1. A description of any alterations to the 100 year flood storage capacity of the site. If a change of flood storage capacity is proposed, demonstrate compensatory storage at every elevation in the flood plain.
2. Maximum groundwater elevations must be given. The calendar dates of measurement, samplings and percolation tests shall be included.
3. Soil characterizations in representative portions of the site, including depth of peat, muck and organic matter in wetland areas.
4. A stormwater management plan and calculations of runoff characteristics based on the following criteria:
  - a. on-site drainage systems - 10 year
  - b. roadway cross-culverts - 25 year
  - c. retention/detention - 2 year & 100 year
5. Runoff characteristics should be calculated for pre- and post development conditions using the standard methods described in the U.S. Soil Conservation Service National Engineering Handbook.
6. Hydrographs that illustrate runoff characteristics before and after the proposed activity.

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7. An erosion control plan shall be submitted describing all methods to control erosion and siltation on site, temporarily and permanently.

8. Hydrologists and engineers shall use the Cornell Atlas of Precipitation Extremes for rainfall quantities.

### (C) Site Plan

The applicant shall submit a site plan, at a scale of 1" = not more than 50', showing the following items:

1. Existing and proposed contours (in contrasting symbols) shall be expressed in feet above sea level with intervals no greater than 3 feet. Date of ground survey shall be given
2. The delineation of all wetlands, lands subject to flooding, water bodies, waterways, ditches, creeks, rivers, streams, ponds, whether natural or manmade, continuously or intermittently flowing. The upland boundary of all bordering vegetative wetlands shall be shown. The 100 year flood elevation shall be shown.
3. A delineation of all alterations proposed in or having an impact on wetlands.
4. Existing stone walls, buildings, rock ridges and outcroppings shall be shown.
5. Location, extent and area of all existing and proposed structures, roadways, paved areas, septic systems, wells, tanks, and utility easements.
6. Proposed lowest elevations of cellars or floors.
7. Existing and proposed location, rim elevation and invert elevation of all catch basins, drains, culverts, and other drainage structures immediately upstream and downstream of the site, as well as those on site.
8. Details and locations for all temporary erosion controls proposed.
9. Proposed permanent pollution control devices on site, such as: hooded catch basins, flow dissipators, or vegetative buffers.

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10. Cross-sections showing existing and proposed slope, elevations, bank and bottom conditions of each water course to be altered. Locations of cross-sections shall be specified.
11. Proposed location of any fill material which will be stored on site.
12. State on plan the location and elevation of bench mark used for survey and datum.
13. The "limit of work" line shall be shown.

### Section IV: ENFORCEMENT AND SECURITY

#### (A) Enforcement

- (1) 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 to continue or allow such fill or other alteration to be left in place without the required authorization pursuant to this by-law.
- (2) Enforcement Orders shall be issued by Commission members or the Conservation Agent in order to secure prompt and continued compliance with the Carver Wetlands Bylaw or work performed under Superseding or Final Orders issued by the Department of Environmental Protection.
- (3) The Enforcement Order shall be in the form shown in the Appendix marked "Form D".
- (4) The Commission or its agent or other duly authorized employee 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.
- (5) The Commission shall have the authority to enforce this Bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions.
- (6) Any person who violates provisions of this Bylaw may be ordered to restore the property to its original condition and take any other action that the Commission deems necessary to remedy such violations.
- (7) Upon the request of the Commission, the Board of Selectmen and

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Town Counsel shall take legal action for enforcement under civil law.

**(8)** Upon the request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.

**(9)** Employees of the Department of Environmental Protection and municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

**(10)** Any person who violates any provision of this Bylaw, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of \$50 (fifty dollars)

**(11)** 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.

### (B) Security

As part of a permit issued by 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 hereunder be wholly or in part by one (1) or more of the methods described below:

1. By a proper bond with sureties satisfactory to the Commission payable to the town or deposit of money or negotiable securities to be held by the Town Treasurer or other undertaking of financial responsibility sufficient in the opinion of the Commission to secure compliance with the Order of Conditions. Such bond or deposit shall be released upon issuance of a Certificate of Compliance.
2. 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 the Town of Carver whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.
3. A Certificate of Compliance may extinguish only those bonds, securities, covenants, restrictions, or easements listed in Section IV (B) (1) and (2), but shall not extinguish any other conservation restriction(s) that might run with the land.

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### Section V: DEFINITIONS

The definitions applicable to the Carver Wetlands Bylaw shall be the same as set forth in 310 CMR 10.00 except for the following modifications to those definitions and additional definitions.

#### Aesthetics -

The relevant qualities to be protected under the Carver Wetlands Bylaw are those natural and natively scenic impressions of our ponds, lakes, streams, rivers, and the lands bordering them. The aesthetic trust of the Commission shall be the preservation of a perception of the land which is most conducive to a continued wildlife habitat, a natural aquatic system and a protective buffer between our wetland resources and human development activities.

#### Alter-

Alter means to change the condition of any area subject to protection by this Bylaw. Examples of alterations include, but are not limited to, the following:

- removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind;
- changing of pre-existing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- drainage or other disturbance of water level or water table;
- placing of fill, or removal of materials, which would alter elevations;
- driving of piles, erection or repair of buildings, or structures of any kind;
- placing of obstructions or objects in water;
- destruction of plant life, including the cutting of trees;
- changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
- any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater;
- use of chemicals for plant or pest control.

#### Applicant-

Any person who files a permit application or request for determination of applicability, or on whose behalf such an application or request is filed, is an applicant.

#### Conservation Commission Agent-

The Agent shall be the duly authorized representative of the Commission, with the authority to carry out certain of the Commission's functions. These shall include, but not be limited to, executing the administrative duties of the Commission, site visits, determination of filing requirement for applicants, determination of filing requirements of all property under the jurisdiction of this Bylaw, determination of application completeness and filing requirements.

#### Issuing Authority-

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In the Town of Carver, both under the state wetlands regulations and under the local Bylaws, the issuing authority is the Conservation Commission.

### Person-

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.

### Recreation-

Recreation under the Carver Wetlands Bylaw is defined as the use and enjoyment of our natural surroundings in a manner consistent with their preservation. Activities shall not hinder access to wetlands and related water recourses.

### Variance-

The Commission shall have the power, after the filing of a Notice of Intent and the conduct of a public hearing, to issue a variance to an applicant requesting to perform activities as described in Section I (C)(3) or Section I(C)(4) of this Bylaw. Such variance shall be set forth by the issuance of an Order of Conditions by the Commission. In order for the Commission to issue a variance with respect to a particular project, it must specifically find, based on clear and convincing evidence set forth by the applicant, that owing to circumstances relating to the soil conditions, hydrological conditions, topography of such land and especially affecting such land but not generally affecting wetlands within the Town, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the applicant, and that desirable relief may be granted without material detriment to the values protected by this Bylaw and without substantially derogating from the extent or purpose of this Bylaw. The Commission may impose conditions, safeguards and limitations in a variance to protect or further the interests protected by this Bylaw. Variances are intended to be granted only in rare and unusual cases.

## Section X: 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 that previously has been issued.