

# Town of Raynham, Massachusetts

558 South Main Street, Raynham, MA 02767  
ph: 508.824.2707

---

## Section 2/17 Wetlands Protection By-Law

### ***Table of Contents:***

Purpose  
Jurisdiction  
Exceptions  
Permit Applications and Requests for Determination  
Notices and Hearings  
Determinations and Conditions  
Provisions

-Regulations  
Definitions  
Security  
Enforcement  
Burden of Proof  
Certificate of Compliance  
Relations to Wetlands Protection Act  
Severability

### ***Section 1 Purpose***

The purpose of this by-law is to protect the wetlands, related water resources and adjoining land areas in the Town of Raynham by controlling activities deemed by the Raynham Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution control, fisheries, wildlife habitat, recreation, aesthetics and agricultural values (collectively the "wetlands values protected by this By-Law").

### ***Section 2 Jurisdiction***

Except as permitted by the Raynham Conservation Commission or as provided in this

By-law, no person shall remove, fill, dredge, build upon or alter the following areas:

- a. Within 100 feet of any freshwater wetland, marsh, wet meadow, bog, or swamp;
- b. Within 100 feet of any bank, lake, pond, stream;

- c. Any land under said waters;
- d. Within 100 feet of any land subject to flooding or inundation by groundwater or surface water.

### **Section 3            Exceptions**

A Notice of Intent required by this by-law shall not be required for maintaining, repairing or replacing an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services provided that:

- a. The structure of the facility is not substantially changed or enlarged;
- b. Written notice with detailed plans of the work to be performed has been given to the Conservation Commission prior to commencement of work;
- c. The work conforms to performance standards and design specifications in regulations adopted by the Commission.

A Notice of Intent required by this by-law shall not apply to emergency projects necessary for the protection of health or safety of the public provided that any one of the following applies:

- d. The work is to be performed by or has been ordered to be performed by an agency of the Commonwealth of Massachusetts or a political subdivision thereof;
- e. Advance written notice has been given to the Commission prior to commencement of work within 24 hours or at the latest by the end of the following work day;
- f. The Commission or its Agent certifies the work as an emergency project;
- g. The work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency;
- h. Within 21 days of commencement of an emergency project as determined by the Conservation Commission, a Notice of Intent shall be filled with the Conservation Commission for review as provided in this by-law.
- i. Special Exception: Normal operation and maintenance of agricultural land.

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 as stated in this section the exceptions provided in Mass. General Law C. 131 Section 40 (Wetlands Protection Act) shall not apply.

#### **Section 4                      *Permit Applications and Requests for Determinations***

A Notice of Intent under MGL C. 131 Sec. 40 (Wetlands Protection Act) shall be filed with the Conservation Commission to perform activities regulated in this By-Law affecting resource areas protected by this By-Law. The Notice of Intent shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with the Order of Conditions issued pursuant to this By-Law and MGL C.131 Sec.40.

Any person desiring to know whether or not proposed activity or any area is subject to this By-Law may request a determination from the Commission. A Request for Determination of Applicability shall contain data and plans specified by the regulations of the Commission.

At the time of filing a Notice of Intent or Request for Determination, the applicant shall pay a filing fee specified in the regulations of the Commission or as specified in MGL C. 131 Sec 40 (Wetlands Protection Act and 310 CMR 10, as amended August 1989 and November 1989, whichever is larger). The Commission may waive the filing fee for a Notice of Intent or request filed by a government agency.

#### **Section 5                      *Notices and Hearings***

At the time any person files an application or Request for Determination with the Conservation Commission, he/she shall give written notice thereof, by certified mail to all abutters according to the most recent records of the Assessors, including those across a traveled way, a body of water, or a town line. The notice to abutters shall enclose a copy of the application or request, with plans, or shall state where copies may be examined by abutters. When a person requesting a determination is other than the owner(s), the request, the notice of the hearing and determination itself shall be sent by the Commission to the owner(s) as well as to the person making the request.

The Commission shall conduct a public hearing on any application or request for determination with written notice given by the applicant at the expense of the applicant, in a newspaper of general circulation in the Town (Taunton Gazette) at least 5 working days prior to the hearing.

The Commission shall commence with the public hearing within 21 days of recorded receipt of a completed application or Request for Determination and shall issue its determination in writing within 21 days of the close of said public hearing. An application or request may be rejected as incomplete by the Commission if the application or request is not filed with the applicable filing fee. In an appropriate case, the Commission may combine its hearing under this By-Law with the hearing conducted under MGL C.131 Sec. 40 (Wetlands Protection Act).

The Commission shall have authority to continue any hearing to a certain date 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 comments and recommendations of other Town boards and officials. If the applicant objects to a continuation or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

#### **Section 6                      *Determinations and Conditions***

If, after a public hearing, the Conservation Commission determines that the activities which are the subject of the application are likely to have significant or cumulative effect upon the wetland values protected by this By-Law, the Commission shall, within 21 days of the close of the hearing, issue or deny a permit for the activities proposed. If it issues a permit, the Commission shall impose conditions, which it 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 the following reasons:

- a. Failure to meet the requirements of this By-Law;
- b. Failure to submit necessary information and/or plans requested by the Commission;
- c. Failure to meet the design specifications, performance standards and other requirements in the regulations of the Commission;
- d. Failure to avoid or prevent unacceptable significant of cumulative effects upon the wetland values protected by this By-Law.
- e. Where no conditions would adequately protect the wetland values protected by this By-Law.

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

A permit shall expire three years from the date issued. Any permit may be renewed once for an additional two-year period, provided that a written request for renewal is received by the Commission at least 30 days prior to the expiration date.

Any permit issued under this By-Law may be revoked or modified by the Commission for good cause after public notice, public hearings and notice to the holder of the permit.

In an appropriate case, the Commission may combine the permit with other action on an application issued under this By-Law with the Order of Conditions issued under the Wetlands Protection Act.

## **Section 7            Provisions**

a. All storm water detention basins shall include inlet and outlet elevations. The bottom of the detention basin shall be designed with a minimum separation distance of 2 feet between the maximum groundwater and the bottom of the basin. Where the bottom of the basin is designed to meet the recharge required for storm water management configured under 310 CMR 10.00 the separation distance shall be 4 feet. Locations for the 10, 25 and 100-year flood elevations must be noted on all plans accompanying an application for a permit filed with the RCC. Detention basins shall be located outside all protectable wetlands resources located on a site for which a permit is requested of the RCC. Plans filed with the RCC shall at a minimum include: cross sections and groundwater determination data for each detention basin proposed on a site. The RCC reserves the right to establish criteria to be used in establishing groundwater levels for sites requiring the use of detention basins as a means of storm water runoff volume and rate of runoff attenuation.

b. DEP file number shall be visible on site at all times while work is being conducted.

c. The RCC ~~may in certain instances, would retain an outside professional consultant to assist it in its evaluation of a project and its associated impacts on wetland resources. When, in the opinion of the RCC, the services of an outside professional consultant are necessary, it shall notify the applicant in order to arrange for the applicant to submit payment for the services of the consultant. This payment will be based on the consultant's estimate.~~ **"The applicant shall deposit with the RCC a payment for consultant review fee in accordance with the schedule of consultant**

review fees listed in the RCC's regulations and posted on the Town of Raynham website." Whereas the website may not always be updated, the schedule of consultant review fees on file at the RCC'S office shall be deemed the current fee schedule (applicants shall verify the appropriate fee schedule at the Commission's office). All funds collected from an applicant for the services of an outside professional consultant shall be placed in an escrow account established by the Town Treasurer for that purpose. Any unused funds remaining upon completion of a project shall be returned to the applicant. The escrow account shall not accumulate any interest income on the principle. The applicant shall be advised of the need to deposit additional payment into the escrow account if the original payment proves to be insufficient to cover the services of the outside professional consultant. The escrow funds shall be over and above the ordinary filing fee required to be paid with an application. The RCC will not issue any decisions on an application for which the consultant's fees have not been paid in good funds. (ATM, MAY 19, 2014, Article 30)

d. For any project that involves bordering vegetated wetlands (BVW) resource filling and replication, the RCC shall consider any prior work on site that may have involved BVW filling and replication, and shall consider the cumulative impact of all prior site activities as part of its evaluation of a project's viability. In no case shall the RCC approve any project for which the cumulative impact exceeds the allowable threshold, change in project proponent or property ownership notwithstanding. The RCC shall consider wildlife habitat and nesting value of the buffer zones associated with a BVW resource where filling of the resource is proposed.

e. All building permit applications filed with the Raynham Building Inspector, where a proposed structure (including, but not limited to any applications for sheds with sona tubes, four-season rooms, garages, etc...) is located within one hundred (100) feet of bordering vegetated wetlands (BVW) or within the riverfront of a perennial waterway, shall require permit sign off by the RCC. Installation of stormwater management facilities and infrastructure within a riverfront area is allowed. However, the RCC shall consider the potential impact of constructing storm water management facilities within the riverfront when evaluating the aggregate impact of work inside the allowable alteration of ten (10) percent of the total riverfront area on a site.

f. All building permit applications filed with the Raynham Building Inspector, where a proposed structure (including, but not limited to any applications for sheds with sona tubes, four-season rooms, garages, etc...) is located within one hundred (100) feet of bordering vegetated wetlands (BVW) or within the riverfront of a perennial waterway, shall require permit sign off by the RCC. Installation of stormwater management facilities and infrastructure within a riverfront area is allowed. However, the RCC shall consider the potential impact of constructing storm water management facilities within the riverfront when evaluating the aggregate impact of work inside the allowable alteration of ten (10) percent of the total riverfront area on a site.

g. There shall be a 25 foot **"no activity"** buffer around a bordering vegetated wetland for all construction activities including but not limited to grading and brush dumping. This provision shall not apply to lots that have been created by deed or plan recorded in the Bristol County Northern District Registry of Deeds or the Registered Land Division of said Registry of Deeds prior to the adoption of this By-Law.

h. ***An interim Foundation as-built plan shall be required in all cases where a building foundation is proposed at a distance of less than sixty (60) feet*** from the boundary of an approved bordering vegetated wetlands (BVW) resource. A building permit other than a foundation permit shall not be granted until the Raynham Conservation Commission (RCC) receives and approves the interim foundation as-built plan. A foundation as-built plan shall include a setback distance from the BVW.

i. All plans submitted to the RCC for its review and approval shall include a reference to the subject property by street address. If no street address is available for the subject property, the plan shall include a reference for the addresses of at least two abutting properties lying adjacent to the property in question.

- j. At least three (3) business days prior to the first hearing date; the applicant shall stake out the project area in the field. The two front corners of the project site must be staked and the site identified with a temporary sign noting the Map and Parcel number, and where applicable, the appropriate street address.
- k. All BVW delineation flags shall be numbered sequentially in the field. The flag numbers shall also be noted on each plan filed with the Raynham Conservation Commission.
- l. All permanent BVW boundary markers as required in an Order of Conditions (OOC) issued by the RCC shall be installed in accordance with the following specifications: Permanent BVW boundary markers shall be constructed of a 2-inch diameter schedule 40 PVC pipe material or approved alternative material; the markers shall be spray-painted green, capped and installed with a minimum buried depth of three (3) feet, and no more than one foot (1 ft.) above the surface elevation of the adjoining ground. The permanent markers shall be installed with a maximum spacing of thirty (30) feet between any two markers in series.
- m. Should have evidence that a one hundred (100) foot jurisdictional/protective buffer zone shall be established around the boundaries for all certified and potential vernal pools with a storage volume equal or greater than one-quarter acre-foot during wet seasons (December-April).
- n. Except as otherwise approved by the RCC, erosion control barriers shall be installed no closer than twenty-five (25) feet to the boundary of an approved BVW. The 25 foot boundary shall not apply to lots created by deed or plan recorded in the Bristol County Northern District Registry of Deeds or the Registered Land Division of said Registry of Deeds prior to the adoption of this By-Law. **Erosion control barriers shall be in a form approved by the RCC during public hearings regarding the project.** For the purpose of establishing the applicable erosion control barrier configuration to be employed at a given site, each plan filed with the RCC shall include a slope detail indicating the general ground surface slope(s) in percent or as a ratio. Erosion control barriers shall be regularly inspected and maintained and repaired as necessary throughout the construction phase by the applicant. All erosion control barriers shall remain in place throughout construction and may only be removed when all disturbed surfaces have been adequately stabilized. Stabilization shall only be evidenced by the issuance of a Certificate of Compliance (COC) by the RCC.
- o. In-ground swimming pools within the 100-foot buffer zone of a BVW resource or a vernal pool shall be installed with cartridge filters. Surface discharge or backwash water shall not be allowed.
- p. Except for individual single family projects, all plans must be prepared, stamped and presented by a registered engineer, registered land surveyor, or registered sanitarian as appropriate. All stamps and signatures shall be made with wet original ink.

### **Section 7-1        Regulations**

After public notice and public hearing the RCC shall promulgate rules and regulations to further define this by-law. Failure of the RCC to promulgate such rules and regulations or to have a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this by-law.

- a.. The fine schedule for wetland infractions, to include filling and disturbing, is \$100 per day. Payment not received within 30 days from date of issuance of the fine for wetland violations shall result in a stop work order being issued on the subject property. The stop work order shall include the fine to be paid and shall be recorded at the Registry of Deeds. Proof of recording shall be supplied to the (RCC). The owner shall be notified prior to the issuance of a stop work order (stop work order will only be applicable on an actual filing initiated by the applicant.) For unauthorized activities or work being conducted without a valid Order of Conditions (OOC), or work being conducted in violation of

an OOC, the recording instrument should be in the form of an Enforcement Order (EO) or a Cease and Desist Order (CDO).

b. At the time an application is filed with the RCC, **3 copies** of the site plan shall be submitted with the application for individual single family projects; all other projects will be required to provide **6 copies** of the site plans.

c. Fees may be established by the RCC and amended, in consultation with and approval of the Board of Selectmen. No such fees shall be implemented unless a public hearing is held to discuss said fees.

d. Any Notice of Intent (NOI) filing that includes a wetland resource delineation that has not been verified by the RCC through an ANRAD review process shall require an additional local by-law fee payment by the applicant, based on the fee schedule documented in the Fee Schedule.

e. A locus plan drawn at a scale of not less than one inch to 1,000 feet shall be included on every plan submitted for review and approval by the RCC. Plans showing the details of proposed work must be drawn to scale in accordance with the following schedule: **Individual lot/site development plans** must be drawn to a scale of **1 inch = 20 feet**; **subdivision plans must be drawn to a scale of 1 inch = 40 feet**. Each application filed with the RCC shall be submitted with **3 copies** of the site/subdivision plan(s) for all individual single family projects all other projects will require **6 copies** of the plans. All submittals must be received in the RCC's office no later than two weeks prior to a scheduled hearing date.

f. Deadlines for all applications are 12 Noon on the Monday two weeks before the scheduled Conservation Commission Meeting.

## **Section 8                      Definitions**

The following definitions shall apply in the interpretation and implementation of this By-law:

The term "person", shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth of Massachusetts or political subdivision thereof to the extent subject to Town By-Laws, administrative agency, public or Quasi-public Corporation or body, the Town of Raynham and any other legal entity, its legal representatives, 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 By-Law:

a. Removal, excavation or dredging of soil, sand, loam, peat, gravel or aggregate materials of any kind.

b. Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, and sedimentation patterns, flow patterns of 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 materials, which would alter elevation(s);

f. Driving of piles, erection, alteration or repair of buildings or structures of any kind;

g. Placing of obstructions or objects in water;

h. Destruction of plant life including cutting of trees;

i. Changing water temperature, biochemical oxygen demand or other physical or

chemical characteristics of water;

j. Any activities, changes or work, which may cause or tend to contribute to pollution of any body of water or groundwater.

## **Section 9                      Security**

As part of a permit issued under this By-Law; in addition to any security required by any other Town or State board, agency or official, the Conservation Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below;

a. By proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission;

b. By a Conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Raynham whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

## **Section 10                    Enforcement**

The Conservation Commission, its Agent, officers and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this By-Law and may make or cause to be made such examination, surveys or sampling as the Commission deems necessary.

The Commission shall have the authority to enforce this By-Law, its regulation, and permits issued hereunder by violation notice, cease and desist orders, administrative orders and civil and criminal court actions.

Upon request of 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 Criminal Law.

Town 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 By-Law, regulations there under, or permits issued there under, shall be punished by a fine of not more than \$300.00. Each offense and each provision of the By-Law, regulations, or permit violated shall constitute a separate offense. Each day of continued non-compliance constitutes a new offense.

In the alternative to criminal prosecution, the Commission may elect to utilize the non-criminal disposition procedure set forth in MGL Ch.40 S 21D.



### **Section 11    *Burden of Proof***

The applicant for a permit shall have the burden of proof by a preponderance of the credible evidence that the work proposed on the application will not have unacceptable significant or cumulative effect upon the wetland values protected by this By-Law. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

### **Section 12            *Certificate of Compliance***

A Certificate of Compliance shall be issued by the Conservation Commission upon the request of the applicant or property owner after construction has been completed in accordance with the applicable Order of Conditions. Request for such Certificate must be filed with the Commission in writing at least 15 days prior to the next regularly scheduled hearing of the Commission at which it may consider the request. All incomplete requests for Certificates of Compliance shall not be considered by the Commission. All applications for Certificates of Compliance are encouraged to review their Orders of Conditions prior to filing any request in order to verify they have met the requirements for the filing of a Certificate of Compliance.

### **Section 13            *Relation to the Wetlands Protection Act***

This By-Law is adopted under the Home Rule Amendment of the Massachusetts Constitution and the House Rule Statutes, independent of MGL Ch. 131 S40 (The Wetlands Protection Act) and regulations there under.

### **Section 14            *Severability***

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

### **Section 15            *Appeals***

A decision of the Commission shall be reviewable in the Superior Court in an action filed within 60 days thereof, in accordance with M.G.L., c.249, s. 4.