Minutes from Bylaw/Regulations Subcommittee Meeting of July 20, 2015
Approved: 8/5/15
Prepared by: Alicia Geilen

The meeting was called to order at 6:10PM. Members present were: Chairperson, Jennifer Hughes; and Commission members David Standley and Michele Hunton. Also present was Conservation Agent Alicia Geilen.

A. Minutes from April 27, 2015

The minutes from April 27, 2015, the last meeting of the subcommittee, were reviewed. It was moved by Jennifer Hughes and seconded by David Standley to approve the minutes as amended. The motion passed with 1 abstention, due to lack of participation at that meeting.

B. Finalization of Draft Bylaw Changes for submittal to Conservation Commission and Special Town Meeting

Agent Geilen presented the draft Bylaw changes. The following generally represents the final language approved by the subcommittee. Revised text are underlined.

PROPOSED ARTICLE: SECTION 2: JURISDICTION

"Except as permitted by the Conservation Commission or as provided in this By-Law, no person shall remove soil or vegetation from, fill, dredge, build upon, discharge into, or alter the following Resource Areas:
Coastal wetlands,
Freshwater wetlands,
Bank, beach, dune, marsh, meadow, swamp, or flat bordering on a water body;
or land within 100 feet of these resource areas;
or land under a water body;
or land subject to flooding, tidal action or coastal storm flowage;
or vernal pools within a wetland resource area;
or land within 150 feet of the Parker River/Essex Bay Area of Critical Environmental Concern;
or Riverfront Area as defined by M.G.L. Chapter 131 §40, as most recently amended.

Any activity proposed or undertaken outside the above areas is not subject to regulation under this By-Law and does not require the filing of a permit application unless and until that activity actually alters any of the said resource areas."

Brief narrative: Riverfront is listed in the Bylaw Rules and Regulations, but not the Bylaw itself.

Estimated Cost: none

The subcommittee agreed to this language.

PROPOSED ARTICLE: SECTION 3: DEFINITIONS, EXEMPTIONS, TIME FRAMES, REQUIREMENTS, AND PERFORMANCE STANDARDS

"The term "Great Bay Area of Critical Environmental Concern" shall include that portion of the state-approved "Great Bay ACEC identified in the publication entitled *Coastal Areas of Critical Concern* prepared by the Massachusetts Coastal Zone Management office, revised August 1989, and as further shown on a map entitled Great Bay Area of Critical Environmental Concern, scale 1" = 1/4 mile, prepared by the Office of Coastal Zone Management as an enlarged composite of four maps from the United States Geological Service."

Brief narrative: The name of the ACEC was changed by the state from "Parker River/Essex Bay Area of Critical Environmental Concern" to "Great Bay Area of Critical Environmental Concern".

Estimated Cost: none

The subcommittee agreed to this language, as amended from "Great Bay" to "Great Marsh".

PROPOSED ARTICLE: SECTION 3: DEFINITIONS, EXEMPTIONS, TIME FRAMES, REQUIREMENTS, AND PERFORMANCE STANDARDS

"The term "Fresh Water Wetland" shall include any marsh, bog, swamp or wet meadow, whether or not it borders on a water body. Said wetland may be defined by its vegetational community, soil composition or hydrologic regime. A wetland not bordering on a body of water and not exceeding 5000 square feet shall not be subject to protection under this By-Law, <u>unless said wetland is or can be certified as a Vernal Pool, as established by Massachusetts Natural Heritage and Endangered Species Program's "Guidelines for Certification of Vernal Pool Habitat."</u>""

Brief narrative: The definition currently excludes non bordering wetlands less than 5,000 sq. ft. This was deemed an issue related to ephemeral pools that have been or would qualify to be certified as Vernal Pools by Massachusetts Natural Heritage and Endangered Species Program.

Estimated Cost: none

The subcommittee agreed to this language

PROPOSED ARTICLE: SECTION 3: DEFINITIONS, EXEMPTIONS, TIME FRAMES, REQUIREMENTS, AND PERFORMANCE STANDARDS

"The term "Alter" shall mean to change the condition of any area subject to protection under this By-Law. Examples of alterations include, but are not limited to the following:

a) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
b) Changing of pre-existing drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
c) Drainage or other disturbances 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 other dam-like structures in water;
h) <u>Destruction of plant life;</u>
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 resource area under the jurisdiction of the Commission;
k) Application of pesticides and/or herbicides."

Brief narrative: The Commission believes that the removal of any trees in the Commission's jurisdiction should require approval by either the Conservation Agent or the Commission. The

Commission plans to propose a local administrative permit for tree removal in planned revisions to the Bylaw Rules and Regulations, anticipated this fall.

Estimated Cost: none

The subcommittee agreed to this language.

PROPOSED ARTICLE: SECTION 19: EFFECTIVE DATE

"This By-Law shall not apply to those projects and activities for which a Notice of Intent has been filed on or before August 15, 1990, and for which a Final Order of Conditions is ultimately issued by the Commission or the Department of Environmental Protection and to those projects for which an Order of Conditions is issued approving the project on or before September 1, 1990. The By-Law shall apply to all other projects and activities.

<u>This By-Law shall not apply to those projects or activities which are exempt from the provisions of the Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40, as amended. This By-Law does not exempt those activities cited in 310 CMR 10.02(2)(b), as may be amended, unless specifically cited in the Ipswich Wetland Protection By-Law Rules and Regulations."</u>

Brief narrative: The Massachusetts Wetlands Protection Act (M.G.L. Ch. 131 section 40) and Wetlands Protection Act Regulations at 310 CMR 10.02(2)(b) currently exempt certain "minor activities". Currently the Ipswich Wetlands Protection Bylaw exempts any activities exempted under both the Wetlands Protection Act and the Wetlands Protection Act Regulations as amended. 310 CMR 10.02(2)(b) was recently amended, and the list of exempt activities greatly expanded. The Commission wishes to exempt some, but not all of the state-exempted "minor activities". As such, only exemptions under the Wetlands Protection Act, as amended, and not under 310 CMR 10.02(2)(b) would be automatically exempt under the Bylaw. The Commission will propose specific "minor activity" exemptions, and/or a lesser administrative approval process for certain "minor activities" in planned revisions to the Bylaw Rules and Regulations, anticipated fall 2015.

Estimated Cost: none

The subcommittee agreed to this language, as amended to add a sentence clarifying that By-Law does not exempt those activities cited in 310 CMR 10.02(2)(b).

PROPOSED ARTICLE: SECTION 3: DEFINITIONS, EXEMPTIONS, TIME FRAMES, REQUIREMENTS, AND PERFORMANCE STANDARDS

Agent Geilen noted that if Section 19 is to be changed regarding no automatic exemptions of the MA Wetland Protection Act regulations, Section 3 will also need to be revised.

"Except as otherwise provided in this By-Law or regulations of the Commission<u>, including but not limited to Section 19 of this By-law,</u> the definitions of terms, exemptions, limited projects, performance standards, time frames, and requirements in this By-Law shall be as set forth in the Wetlands Protection Act, MGL Chapter 131, Section 40, and in 310 CMR 10.00 ("the State regulations") as may be amended from time to time.

Brief narrative: The Massachusetts Wetlands Protection Act (M.G.L. Ch. 131 section 40) and Wetlands Protection Act Regulations at 310 CMR 10.02(2)(b) currently exempt certain "minor activities". Currently the Ipswich Wetlands Protection Bylaw exempts any activities exempted under both the Wetlands Protection Act and the Wetlands Protection Act Regulations as amended. 310 CMR 10.02(2)(b) was recently amended, and the list of exempt activities greatly expanded. The Commission wishes to exempt some, but not all of the state-exempted "minor activities". As such, only exemptions under the Wetlands Protection Act, as amended, and not under 310 CMR 10.02(2)(b) would be automatically exempt under the Bylaw. The Commission will propose specific "minor activity exemptions", and/or a lesser administrative approval process for "minor activities" in planned revisions to the Bylaw Rules and Regulations, anticipated this fall."

Estimated Cost: none

The subcommittee agreed to this language.

Proposed article: SECTION 4. FILING PROCEDURE
Agent Geilen noted that the By-law is confusing as related to state forms, does not include Abbreviated Notices of Resource Area Delineation or the Restoration Notices of Intent. This section also appears to not allow for additional local forms.

"A permit application ("Application"), which may be identical in format to state forms, as required pursuant to MGL Chapter 131 Section 40, shall, at a minimum, have the same content as that required by these forms. The application shall include such plans as may be necessary to describe the boundaries of wetland resource areas, the proposed activity, and its effects and potential impacts upon the ability of the resource area to protect the interests identified in this By-Law. No work shall begin until the permit, which may be the same as permits issued under MGL Chapter 131 Section 40 has been issued, all appeal periods have expired, and said permit, if required by MGL Chapter 131 Section 40, has been recorded with the Registry of Deeds or Land Court, in accordance with Section 18 of this By-Law.

The application shall be sent by certified mail, return receipt, or hand delivered to the Ipswich Conservation Commission at the Town Hall, or in its absence, to the Town Clerk. No such application shall be sent before all permits, variances, and approvals, except a building permit, required by local by-law with respect to the proposed activity have been obtained except that such application may be filed, at the option of the applicant, after the filing of an application or applications for said permit, variances, and approvals; provided that such application shall include any information submitted in connection with such permits, variances, and approvals which is necessary to describe the effect of the proposed activity on the interests protected by this By-Law."

Brief narrative: The MA Department of Environmental Protection has added three new forms since the By-Law was passed, including: Abbreviated Notice of Resource Area Delineation, Restoration Notice of Intent. The By-Law, as currently written does not include these forms, or the Request for Determination of Applicability. The changes are intended to be inclusive of any permit application received by the Commission, and any permits issued by the Commission, and allow for additional forms which may be required in the future by the state of the Commission under their respective regulations.

Estimated Cost: None.

The subcommittee agreed to this change.

C. Discussion of Bylaw Rules and Regulations Changes

It was decided that the subcommittee would wait until after the Bylaw revision process was complete to consider changes to the rules and regulations.

D. Next Meeting

No next meeting of the subcommittee was scheduled.

E. Adjournment

David Standley moved to adjourn the meeting. The motion was seconded by Michele Hunton. The motion passed unanimously, and the meeting ended at 7:10PM.

Respectfully submitted,

Alicia Geilen, Agent.